



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNR, FF

### Introduction

This hearing dealt with a landlord's claim for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

My authority to resolve disputes is delegated by the Director of the Residential Tenancy Branch and is limited to tenancy agreements to which the *Residential Tenancy Act* ("the Act") applies. At the commencement of the hearing, I determined it was necessary to explore whether I have jurisdiction to resolve this dispute.

Section 2 of the Act provides that the Act applies to residential tenancy agreements between a landlord and tenant with respect to possession of the rental unit and use of the residential property; however, section 4 exempts certain living accommodation from application of the Act.

Section 4(c) provides that the Act does not apply to:

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The above exemption is in keeping with the rights that tenants are entitled to receive under the Act such as "exclusive possession of the rental unit" as provided under section 28(c) of the Act.

Below, I have summarized the parties' respective positions regarding the living arrangement between the two parties.

The parties executed a document entitled "Rental Agreement" on January 22, 2016 requiring the tenants to pay rent of \$1,900.00 on the first day of every month for a term set to commence on February 1, 2016 and expire on May 31, 2017. The parties provided consistent testimony

that the tenants vacated the rental unit in early September 2016 and paid rent for the first half of September 2016. The landlord seeks to hold the tenants responsible to compensate her for unpaid or loss of rent for the second half of September 2016 through to the end of the fixed term of May 31, 2017.

The parties provided consistent testimony that the landlord is the owner of the property and the tenants are the former owners of the property. The rental unit is a single family dwelling over two floors. Both the upper and lower floors have kitchen and bathroom facilities but the two floors are open to each other by way of an open staircase and there is no separation between the two floors. The tenants spent much of their time on the upper floor; however, they provided personal care under a government contract to two disabled adults who occupied the lower floor of the house much of the time.

The landlord was of the position she also lived at the property, sleeping in a room on the lower floor and using the bathroom on the lower floor, and that she had the right to reside in the rental unit under the rental agreement. The landlord pointed to the rental agreement in support of that position. Term number 3 of the rental agreement provides as follows:

3. The Tenant agrees that the Premises shall be used as a private residence only by not more than the Landlord, the tenants and two adults that the Tenants provide care services for.

The landlord stated that shortly after the tenants vacated she moved her personal possessions to the upper floor for use as her living accommodation and that she now provides the personal care services for one of the persons that the tenants provided care for (the other person in care moved out). The landlord explained that she cannot re-rent the rental unit because the property must be used to provide housing to the person she provides care for and receives compensation from the government.

The tenants explained that the parties had derived a plan whereby the landlord would eventually take over the service contracts for the persons they were providing care for; however, during their tenancy the landlord was only supposed to stay at the rental unit when she provided respite care for them or attempting to foster a relationship with the persons in care. The tenants were of the position that the landlord lived elsewhere with her boyfriend and that she did not reside at the rental unit; however, the tenants acknowledge that there was conflict over the landlord bringing her personal possessions to the property, as well as the landlord inviting friends and contractors to the property while they were residing there. The tenants stated that when they approached the landlord about their dissatisfaction with the landlord's actions, the landlord's response was that she was the owner of the property and entitled to do these things.

Included in the tenant's evidence was a letter they wrote to the landlord on August 9, 2016. Included in the letter were the following statements they made to the landlord: "You have

indicated that you are a resident of [rental unit] and that we encouraged you to be a resident. This is not correct.”

From what has been presented to me, it is clear that the parties were in disagreement as to the landlord’s right to reside at the rental unit. Where there is a question as to whether the Act applies to an agreement between the applicant and the respondent, the applicant bears the burden to prove that it does. In this case, the landlord has argued that the tenants were not entitled to exclusive possession of the rental unit and that she had the right to reside in the rental unit, and that she did reside in the rental unit and used the bathroom facilities in the rental unit. Although the landlord claims she did not use the kitchen she acknowledged that she did use the bathroom and it appears to me that the tenants also had a right to use the same bathroom under their rental agreement.

In light of the above, I find the landlord’s position indicates that this tenancy agreement is exempt from application of the Act under section 4(c) of the Act. Since the landlord is the applicant, I decline jurisdiction to further consider her claims against the tenants.

#### Conclusion

I have declined jurisdiction to resolve this dispute.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 07, 2017

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Residential Tenancy Branch