



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** MNSD

### Introduction

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) for the return of the security deposit.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the application and to make relevant prior submission to the hearing and to participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord acknowledged receiving the evidence of the tenant. The tenant stated they had not received the evidence of the landlord. The landlord was unable to prove how they sent their evidence to the tenant as they were not the one to send it. As a result the landlord's evidence was not considered in this matter.

### Preliminary matters

The tenancy has ended. During the course of the hearing the applicant tenant provided evidence the landlord is the owner of the subject accommodation of this matter. The tenant also provided evidence the tenancy had consisted of a furnished room and private bathroom on the same residential property occupied by the applicant and the respondent landlord. The landlord claims that they and the tenant shared the kitchen of the residential property as well as the remainder of the house and therefore The Act does not apply to this accommodation. The tenant provided a copy of the tenancy agreement indicating that the rent included the cooking amenities (stove and oven/fan), refrigerator and laundry. The tenant also provided photographs of what they refer to as the *front kitchen* depicting every surface covered in various items, containers and plants, including the stove surface. The tenant also provided photo images of the *back kitchen* depicting all of the items listed in the tenancy agreement. The landlord testified the back kitchen was the one routinely used by everyone in the house including themselves, with which the tenant agreed, and that the front kitchen was clearly unusable due to its cluttered condition. On the balance of probabilities I have determined that the owner of the accommodation and the tenant shared the same usable kitchen facilities of the accommodation.

### Analysis

**Section 4** of the *Residential Tenancy Act* (the Act), in relevant part, states as follows;

## What this Act does not apply to

### 4 This Act does not apply to

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

Based on the evidence of the tenant and the testimony of both parties, I find that in this tenancy the tenant shared the same kitchen facilities with the owner of the purported rental unit and as a result **I must decline jurisdiction**, and effectively **dismiss** the tenant's application.

It must be known that it remains available to the tenant to seek resolution of issues related to this tenancy by alternate means than the *Residential Tenancy Branch*.

### **Conclusion**

I do not have jurisdiction under the Residential Tenancy Act to hear this application.

The tenant's application **is dismissed**, *without leave to reapply*.

**This Decision is final and binding.**

*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: June 05, 2017

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Residential Tenancy Branch