



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. I find that the Notice to End a Residential Tenancy dated December 2, 2017 to be effective December 31, 2017 was served by posting it on the door. The effective date on the Notice is automatically corrected to January 31, 2018 pursuant to section 53 of the Residential Tenancy Act as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The landlord admitted service of the application for dispute resolution. The tenant applies to cancel a Notice to End the Tenancy for cause pursuant to section 47 of the *Residential Tenancy Act* (the Act) and, to order the landlord to obey the Act and to recover their filing fee.

**Issues:** Is the tenant entitled to any relief?

### **Preliminary Issue:**

Do I have jurisdiction in this matter?

Section 4 of the Act states that it does not apply in certain circumstances. Section 4(c) provides that it does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The landlord's position is that the Act does not apply to this situation. She said she mistakenly used forms from the Act but she is the owner of the home and shares kitchen facilities with all the room mates in the home. The named tenants in this dispute state that the Act should apply to their situation. They said the owner has never lived in the home since July 2017 when they moved in.

The landlord/owner stated that this is her home and she was delayed in coming home in September as her vehicle with all her documents, including passport, was stolen in

another country. She expected to come back and stay in the studio in the home. The room mate occupying the studio was returning to another country but extended her visa when she heard of the landlord's problem.

The named tenants said the studio has its own kitchen so the owner would not share the main kitchen. The owner said the studio has a small kitchenette with no oven etc. and she shares the main kitchen when she is home. She agreed that she travels a lot and spends the winter in a warmer climate but said she returns to her home and occupies a room that happens to be vacant at the time and shares all the facilities with the room mates. She provided several letters from past room mates confirming this arrangement. She also provided a copy of a letter dated June 22, 2017 to the named tenants advising them of this arrangement before they moved in.

**Analysis and Conclusion:**

I find the weight of the evidence is that the named landlord is the owner of the home and that she shares the main kitchen with the room mates in the home. While her circumstances prevented her from returning while the applicants were living there between July 2017 and January 2018, I find she is the owner and shares the main kitchen with the room mates when she is there. I find the applicants were advised of this arrangement before they moved in.

I find I have no jurisdiction in this matter pursuant to section 4 of the Act. No filing fee is recoverable. The parties agreed they would settle the matter among themselves and the landlord advised she wanted to withdraw her Application scheduled for a later date.

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: January 23, 2018

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Residential Tenancy Branch