



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- A monetary order for damage or compensation under the *Act* with leave to apply the security deposit, pursuant to section 67;
- A monetary order for damages for the landlord under the *Act* with leave to apply the security deposit, pursuant to section 67;
- A monetary order for unpaid rent or utilities for the landlord under the *Act* with leave to apply the security deposit, pursuant to section 67, and;
- recovery of the filing fee for this application from the tenant pursuant to section 72.

The landlord and the tenant attended the hearing by way of teleconference. The landlord, and the tenant were given a full opportunity to be heard, to present affirmed testimony, to make submissions and, to call witnesses.

### Issue(s) to be Decided

Preliminary Issue – Jurisdiction

Do I have jurisdiction under the *Act* to consider the application for dispute resolution?

The parties agreed that the issue of jurisdiction should be dealt with as a preliminary matter as it was in dispute. The tenant's position is that the *Act* applies to the relationship he had with the owner of the property. The landlord's position is that the *Act* does not apply based on the wording of section 4.

If jurisdiction is established it must then be determined if the landlord is entitled to a monetary order for compensation; damage; and/or rent.

### Background and Evidence

There was a substantial amount of documentary evidence filed by each of the parties. While I have turned my mind to all the documentary evidence which was filed within the time prescribed the *Act*, and the testimony of the parties, not all details of their respective submissions and / or arguments are reproduced here. The principal aspects of the evidence on jurisdiction and my findings are set out below.

The crux of the dispute as between the parties is whether or not the landlord and the tenant shared bathroom or kitchen facilities. The reason is that section 4 of the *Act* states in part:

- 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,...*

There is no issue in this proceeding that:

- the landlord is the owner of the premises
- the landlord and her daughter reside in the premises
- there was at least one other person renting a room in the premises during the time that the tenant was living there
- on more than one occasion family members of the landlord stayed at the premises as guests – although the tenant may not have always known
- there were two written agreements signed as between the landlord and the tenant entitled “Rental Contract”
- the terms of the “Rental Contract” stated in part that, “Rental is for one furnished room” and contained a reference to a “shared area”
- there is more than one bathroom and more than one kitchen in the premises.

The landlord gave affirmed testimony about the use of the downstairs bathroom and kitchen by herself and members of her family. This evidence was supported by written statements of the landlord’s daughter who also resides in the premises; the landlord’s other daughter who with her two children visited and stayed in the premises in 2017 and 2018; the landlord’s nephew who visited and stayed in the premises in 2016.

In summary all of these people say that they have used the downstairs bathroom and, the landlord’s nephew says he used the downstairs bathroom as well as the kitchen and basement living room extensively while he was there.

The landlord’s daughter GL who also lives in the premises provided both oral testimony and a signed witness statement that she uses the downstairs bathroom. Her witness statement is signed by the other downstairs tenant SE with the notation:

“I have reviewed this and certify that the information provided is true”.

The tenant's response to this evidence about the use of the downstairs bathroom and kitchen is essentially that it did not happen or, if it did happen it was without his knowledge and consent.

To support his version of events the tenant has secured statements from other past and current renters of a basement room at the premises. In both instances the witnesses were asked if they had ever seen the landlord use the bathroom or kitchen "downstairs in our suite".

The answers given were not helpful to the tenant. A witness LW replied in part: "I can't recall to be honest, but I remember her coming downstairs to sew", and, "...I always found they were a little foggy on boundaries".

A witness SE replied in part "I haven't see [landlord] use the kitchen or bathroom, but I wouldn't be surprised if she has come down to use the bathroom while [G] was showering or something".

The tenant's witness/girlfriend who also resided in the premises between August of 2017 and March of 2018, testified that she had never seen the landlord or her daughter use the downstairs kitchen or bathroom.

I noted that the tenant only ever raised the issue of the application of the *Act* to the premises after he had agreed to vacate at the conclusion of the fixed term on April 30, 2018. He later decided to leave without any prior notice (written or otherwise), on March 31<sup>st</sup>. I also noted that the tenant had cancelled his April rent cheque and testified at the hearing that he believed he was entitled to one month's free rent per the terms of the *Act*.

### Analysis

Section 4 of the *Act* provides that the *Act* does not apply to living accommodations in which the tenant shares bathroom or kitchen facilities with the landlord.

I found the evidence adduced by the landlord on the issue of the shared use of the downstairs bathroom to be more reliable. This evidence came from a variety of sources and was consistent and compelling. The other basement tenant in the premises was approached by both the landlord and the tenant to provide evidence and while she was not a witness at the hearing, her written statements support the position of the landlord.

I also find that the conduct of the tenant was not consistent with his position that the *Act* applies; specifically, his leaving a month early, on no notice and, after cancelling his last rent cheque.

The tenant referred to several earlier Decisions of arbitrators made under the *Act* in support of his position. I am not bound by the Decisions and having reviewed them see that they are distinguishable on the facts in any event. In one instance there was no written agreement. In another the landlords alleged the tenants shared a bathroom with the housecleaner that used to

clean every two weeks. Another imputes a test of necessity which is not found in the *Act* and I respectfully disagree with the reasoning.

For these reasons I find on a balance of probabilities that the landlord and the tenant shared the basement bathroom facilities and as a result the tenancy does not fall within the jurisdiction of the *Act*. I therefore have no jurisdiction to render any further decision in this matter.

### Conclusion

I decline to hear this matter further as I have no jurisdiction to consider this application.

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 06, 2018

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Residential Tenancy Branch