



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC DRI ERP AT LRE OLC RR MNDC

### Introduction

This hearing was convened as a result of the an Application for Dispute Resolution, made on November 2, 2018, and amended on November 20, 2018 (the “Application”). The Applicant claimed the following relief pursuant to the *Residential Tenancy Act* (the “Act”):

- an order cancelling a notice to end tenancy for cause;
- an order relating to a disputed rent increase;
- an order that the Respondent make emergency repairs for health or safety reasons;
- an order authorizing the Applicant to change the locks to the rental unit;
- an order setting or suspending conditions on the Respondents’ right to enter the rental unit;
- an order that the Respondents comply with the *Act*, regulations, and/or the tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- a monetary order for money owed or compensation for damage or loss.

At the outset of the hearing, the parties agreed that P.H. is a minor and should be removed as a participant from these proceedings. Pursuant to section 64 of the *Act*, I amend the Application accordingly.

The Applicant and the Respondents attended the hearing at the appointed date and time, and each provided a solemn affirmation.

The Applicant and the Respondents confirmed service and receipt of the Application package and the documentary evidence to be relied upon. The parties were in attendance and were prepared to proceed. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Issue – Jurisdiction

During the hearing, the Respondents raised the issue of my jurisdiction to hear the Applicant's claims. The agreement between the parties was not reduced to writing. However, S.P. testified that the arrangement between the parties was intended to be short-term. The parties agreed the Applicant stayed in S.P.'s house as a guest through August and September 2018. The Applicant then moved into the downstairs part of the home on or about October 1, 2018. The Applicant pays \$600.00 per month to the Respondents.

In particular, S.P. stated the Applicant agreed to occupy the downstairs living area, which did not include a kitchen. Both S.P. and R.H. testified the original arrangement was for the Applicant to share their upstairs kitchen area. However, the Applicant subsequently changed her mind and chose to use small appliances to prepare food downstairs.

S.P. also testified that the Applicant also requested a kitchen, which he considered, but that the Applicant balked when he suggested he would increase rent and require a written tenancy agreement if a tenancy was to be created. The parties acknowledged that the door between the upstairs and downstairs living areas is not locked. The Applicant also acknowledged that S.P. accesses the downstairs on occasion, although she has requested that a lock be placed on the door.

Further, S.P. confirmed that he has asked the Applicant in writing to vacate his home. He stated he did not issue a notice to end tenancy in the approved form because of his understanding that the *Act* does not apply to the living arrangement between the parties.

The Applicant testified she was told she could stay in the suite for as long as she likes. She also stated that kitchen facilities were not shared with the Respondents. Rather, the Applicant advised that she gets by using small appliances to prepare food. The Applicant testified that a full kitchen is not required and that family services have approved the accommodation for her daughter. She testified she never intended to use the upstairs kitchen.

Section 4(c) of the *Act* confirms that the *Act* does not apply to living accommodation in which the Applicant shares bathroom or kitchen facilities with the owner of that accommodation. In this case, I find it is more likely than not that the original agreement between the parties involved the shared use of the Respondents' kitchen as the downstairs living area does not include a kitchen. The Applicant acknowledged that she started as an unpaid guest of the Respondents. That the Applicant decided she wanted more privacy and prepared food downstairs does not alter the original agreement.

Accordingly, pursuant to section 4(c) of the *Act*, I find the *Act* does not apply to the agreement between the parties. The Application is dismissed for lack of jurisdiction.

### Conclusion

The Application is dismissed for lack of jurisdiction.

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: December 11, 2018

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Residential Tenancy Branch