



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution, made on November 6, 2018 (the “Application”). The Applicant applied for an order that the Respondent comply with the *Residential Tenancy Act* (the “Act”), regulation, and/or the tenancy agreement, pursuant to the *Act*.

The Applicant and the Respondent attended the hearing in person, and provided affirmed testimony.

The Applicant testified that the Respondent was served with the Application package and documentary evidence by registered mail. The Respondent acknowledged receipt. The Respondent testified the documentary evidence was served on the Applicant in person. The Applicant acknowledged receipt but suggested he did not know it was evidence in response to the Application. During the hearing, neither party raised any other issue with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents were 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issue – Jurisdiction

The issue of jurisdiction arose during the hearing. The Respondent testified she is the legal owner of the property, which was transferred into her name soon after the death of her husband. Both the Respondent and the Applicant acknowledged that kitchen facilities were shared until the Respondent moved out on September 6, 2018. The rental property had become too much for her to manage. Soon after, the Respondent's lawyer sent a letter to the Applicant asking him to vacate the rental property. The Applicant testified the Respondent returns to the rental property on an almost daily basis.

The Applicant submitted that the agreement changed when the Respondent moved out of the property, in part because the kitchen facilities have not been shared since that date. He submitted that the *Act* therefore applies to the arrangement between the parties and that any notice to end tenancy issued by the Respondent should be in the prescribed form.

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 accept the Respondent's testimony confirming she is the owner of the property. Further, I find that the agreement involved the shared use of kitchen facilities. As noted by the Applicant, the Respondent returns to the property on an almost daily basis. As a result, I find the Respondent's decision to move out of the rental property did not create a new tenancy. To conclude so would effectively create a tenancy where none previously existed. That was obviously not the intention of the Respondent.

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 13, 2018

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Residential Tenancy Branch