



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FFL MNRL-S

### **Introduction**

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

- a monetary order for compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution ('Application'). In accordance with section 89 of the *Act*, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

### **Preliminary Issue: Do I have jurisdiction under the *Act* to consider this matter?**

Both parties confirmed that when the tenant first moved into the home, he resided upstairs in a room on the main floor, and shared a kitchen with other occupants and the landlord. The landlord testified that this was a temporary arrangement until the lower, self-contained suite was ready as the lower suite was rented out. The landlord testified that the actual tenancy was to begin on October 1, 2018, with monthly rent set at \$950.00 for that lower self-contained suite. Both parties confirmed that there were not written tenancy agreements signed. Both parties confirmed that the tenant moved out

on or about October 27, 2018, and the landlord is seeking compensation for the tenant's failure to comply with the *Act* in ending this tenancy.

The tenant does not dispute that he moved downstairs as of October 1, 2018. The terms of the tenancy are disputed by both parties, specifically whether the tenant was allowed to continue using the kitchen upstairs. The landlord's testimony is that the tenant had use of mini appliances in his self-contained rental unit, and his monthly rent did not include use of the kitchen upstairs. Both parties do not dispute that the tenant continued to use the kitchen upstairs, but the landlord testified that this was done without his permission. The landlord confirmed that there was no physical separation between the downstairs suite and the upstairs portion of the home as the tenants shared the laundry facilities, and required access. The landlord's witness, IS, attended the hearing to testify to the fact that the tenant continued to use the kitchen despite the fact he was not to do so. The landlord testified that IS was often at the home, and assisted in the cleaning of the home.

The tenant testified that the landlord had allowed him to continue to use the kitchen on a "now and then basis" as he did not have an oven in his suite. The tenant also testified that he was allowed to store his food in a designated location in the refrigerator upstairs. The tenant provided a text message dated October 13, 2018 from the landlord which stated he had "limited use of FREEZER. Use of range OVEN. Limited use of range for multiple cooking pots. SINGLE FRYING PAN OR SINGLE POT COOKING IS NOT PERMITTED UPSTAIRS. Washing personal dishes or pot pan is performed in your own suite as you have a mini-sink". The landlord provided a word document containing the wording he used for the advertisement he posted for the mini-suite, and testified that neither the previous, or next tenant in the mini-suite had access to the kitchen upstairs.

### **Analysis**

Section 4(c) of the *Act* reads in part as follows:

- 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,...*

The evidence of the landlord and the tenant is that the tenant had moved from the upstairs portion of the home into his own suite downstairs. Both parties confirmed that this was a temporary arrangement until the downstairs suite was ready. It is disputed as to whether the tenant was allowed to continue sharing the kitchen upstairs, which the

tenant continued to use. I have considered the evidentiary materials submitted, as well as the sworn testimony in the hearing. In the absence of a written tenancy agreement, I must rely on the evidence submitted for the hearing and on a balance of probabilities I find that the tenant has provided sufficient evidence to support that although he may not have had full use of the upstairs kitchen after October 1, 2018, the tenant has provided sufficient evidence for me to find that on a balance of probabilities that he still had partial access and use of the facilities. Furthermore, it was undisputed by both parties that there was no physical separation between the tenant's suite and the upstairs portion of the home. The tenant was able to physically access the facilities, which he did. Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this tenancy as the tenant had shared the kitchen with the landlord. I therefore have no jurisdiction to render a decision in this matter.

### **Conclusion**

I decline to hear this matter 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: March 14, 2019

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Residential Tenancy Branch