



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, MNDCT, FFT

### Introduction

This hearing dealt with D.T.'s application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from S.N., pursuant to section 72.

S.N., D.T and D.T.'s sister attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of D.T.'s notice of application for dispute resolution and two amendments were confirmed, in accordance with section 89 of the *Act*.

### Preliminary Issue- Jurisdiction

Both parties agree to the following facts. D.T. no longer resides at the subject rental property. Prior to this dispute the parties were involved in a five-year romantic relationship. S.N. owns two houses located on the same property. S.N. lives in one of the houses (the "cottage") and the second house is rented to international students. D.T. split her time between the cottage and a fifth wheel, jointly owned by the parties, in

another city in which D.T. worked. When D.T. was at the cottage, she and S.N. shared a kitchen and bathroom.

Both parties agree to the following facts. D.T. entered into a tenancy agreement dated September 1, 2018 with S.N. for the second house. D.T. is listed as the tenant on the tenancy agreement and S.N. is listed as the landlord. D.T. did not move into the second house on September 1, 2018 and only entered into the tenancy agreement so that international students would be permitted to reside at the subject rental property as the program required an adult to live with the international students. D.T. kept a room with personnel belongings in a bedroom at the second house.

The relationship between the parties deteriorated in and around September of 2019. S.N. testified that she asked the D.T. to move back to the fifth wheel but she refused and moved into the bedroom with her belongings at the second house. S.N. testified that D.T. moved into the second house in the beginning of October 2019. D.T. testified that she moved into the second house in the beginning of November 2019.

S.N. testified that she wanted D.T. to leave her property entirely and go back to the fifth wheel, but while D.T. was at the second house, she wanted D.T. to contribute and asked for \$300.00 per month. The parties did not agree on what amount was actually paid from D.T. to S.N. from October to December 2019. D.T. testified that she wanted to move out but was having difficulty doing so.

Both parties agree to the following facts. S.N. removed D.T.'s belongings from the cottage and put them under a tarp on her driveway while D.T. was out of town. D.T. claims her personal property left under the tarp was damaged and that this comprises the bulk of her monetary claim.

I find that D.T.'s claim arises out of the breakdown of a romantic relationship and not from a landlord/tenant relationship. I find that the residential tenancy agreement entered into by the parties was a fictional tenancy entered into to permit S.N. to rent the second house to international students. While D.T. resided at the second house for a few months at the end of 2019, I again find that this was not a landlord/tenant relationship, but a temporary living arrangement following the demise of the parties' romantic relationship.

Section 2(1) of the *Act* states that despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units

and other residential property. As the relationship between the parties is not that of a landlord and a tenant, I find that I do not have jurisdiction to hear this claim.

I also note that section 4(c) of the *Act* states that this *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Both parties acknowledged that they shared a kitchen and bathroom at the cottage. Therefore, pursuant to section 4(c) of the *Act*, I find that I do not have jurisdiction to hear claims arising out of that relationship. In this case, the bulk of D.T.'s claim arises out of items removed from the cottage.

### Conclusion

I dismiss D.T.'s application without leave to reapply for want 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: February 21, 2020

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Residential Tenancy Branch