



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution, made on June 2, 2020 (the "Application"). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Applicant's Agents, K.W. and G.M, the Applicant's Counsel M.C., and the Respondent attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

At the start of the hearing, the Applicant's Counsel submitted that the Act does not apply to this living situation. The Applicant's Counsel submits that the Respondent occupies only a bedroom in the basement of the home which is shared with the Applicant. The Respondent is not required to pay rent, or utilities, and did not pay a security deposit. The Applicant's counsel stated that the Respondent does not have a written tenancy agreement and shares the kitchen and washroom facilities with the Applicant. The Applicant's Counsel submits that the Applicant stores her personal possessions in the basement area which is largely an unfinished space.

The Respondent stated that he has a working relationship with the Applicant as he was involved in conducting renovations at the rental property. The Respondent stated that he moved into the basement on October 31, 2018 and that the basement was meant to be converted into a self-contained rental unit, however, currently it has a bedroom, a

bathroom, and a large unfinished room. The Respondent stated that he has access to the rest of the rental property, however, would only go upstairs if invited to do so. The Respondent stated that he and the Applicant had discussed an amount of rent, however, no rent has been paid.

Section 4(c) of the *Act* confirms that the *Act* does not apply to living accommodation in which the owner shares bathroom or kitchen facilities with the Respondent. In this case, the Applicant's Counsel testified that the Applicant and the Respondent share common areas, which include the kitchen as well as bathroom facilities.

In this case, I find that it is more likely than not that the Respondent has access to all areas of the rental property and is free to make use of common areas including kitchen and washrooms which are shared with the Applicant. While the Respondent stated that the basement was meant to be a self-contained rental unit, I find that the Respondent has provided insufficient evidence to demonstrate that the parties agreed that he is to have exclusive access only to the basement.

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

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicant should seek legal advice from their lawyer as to how to resolve this dispute.

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 25, 2020

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Residential Tenancy Branch