



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms its email address as set out in the Tenant’s application.

### Issue(s) to be Decided

Does the Act apply to the accommodation?

### Background and Evidence

The following are agreed or undisputed facts: The tenancy of a room in a house started on September 1, 2018. The Landlord owns the house containing the unit.

The Landlord states that the tenancy agreement references a shared kitchen space, that the Tenant was provided with access to the kitchen space at all times and shared it with the Landlord.

The Tenant states that it only used the kitchen space a handful of times for use of the oven. The Tenant states that it was provided with a toaster oven, microwave, hot plate

and fridge in an area that was not used by the Landlord. The Landlord states that the space containing the kitchen items was shared as well by the Landlord and that the Tenant only had exclusive use of a bedroom and bathroom. The Tenant argues that the Landlord never informed the Tenant that the tenancy was outside the scope of the Act.

### Analysis

Section 4(c) of the Act provides that this Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. Based on the undisputed evidence that the Landlord owns the accommodation, given the Tenant's evidence that the kitchen was shared with the Landlord a few times and the Landlord's evidence that the Tenant was given access to the kitchen throughout the tenancy, I find on a balance of probabilities that the Act does not apply. Each Party is responsible for knowing whether the Act applies to their living accommodation. The application is dismissed.

### Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 21, 2020

---

Residential Tenancy Branch