



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      MNDL-S, MNDCL-S, FFL / MNSDS-DR, FFT

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The landlord’s for:

- authorization to retain a portion of the tenant’s security deposit in satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit, and for unpaid utilities in the amount of \$612.79 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- monetary order for \$1,895 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Preliminary Issue – Jurisdiction**

At the outset of the hearing, the landlord stated that he did not believe that the Act applies to the tenancy, as the tenant rented a single room in the residential property (which he owns) and as the tenant shared the use of a kitchen and bathroom with him. He testified that he intended to take the tenant on as a boarder and not a tenant under the Act.

The tenant disagreed with the landlord and testified that he rented an entire suite from the landlord. He testified that he had a kitchen and bathroom for his exclusive use, and that the rental unit had a separate entrance for his use only.

The residential property is a single-detached home. The landlord lives on the upper floor. There is a one-bedroom suite on the lower floor (the “Suite”) with a gas-powered kitchen and a bathroom. The laundry facilities and the mechanical room for the entire residential property are located in the Suite. The landlord says the tenant only was renting the bedroom located in the Suite and shared use of the rest of the Suite (which

included a living area, laundry facilities, kitchen and bathroom) with the landlord. The tenant says he was renting the whole Suite and had exclusive use of the kitchen and bathroom.

The landlord testified that, at the time the parties entered into the tenancy agreement, it was his intention to continue to be able to use the Suite during the tenancy, so he could:

- 1) have unfettered access to laundry and the mechanical room;
- 2) use the bathroom when he was working in the garage;
- 3) use the kitchen in the event of a power outage (the upstairs kitchen is electric, and the Suite kitchen is gas-powered); and
- 4) have the flexibility to make renovations in the Suite.

The landlord testified that on a few occasions he used the bathroom in the rental unit and made the occasional cup of tea in the downstairs kitchen. Additionally, he testified that he did not have sufficient references from the tenant to feel comfortable entering into a tenancy agreement for the entire Suite.

The landlord testified that he attempted to locate a form for the rental of a single room in a house on the RTB website but could not find one. As such, he modified the standard form tenancy agreement by writing on the first page: "renting room on the ground level of main house". Both he and the tenant signed their initials next to this term. They did not sign the final page of the tenancy agreement. He argued that this was clear evidence of the parties' intention to rent the bedroom only to the tenant.

The landlord also testified that the amount that the tenant was paying for rent (\$1,250) would be below market rate for a basement suite in the area. He entered no evidence corroborating this.

The tenant agreed that the tenancy agreement stated that he was renting a room on the ground level of the main house. He agreed that he initialed beside this term.

However, he testified that he understood this term to mean that the landlord would be able to use the laundry and mechanical room whenever he wanted. He testified that he understood he had exclusive use of the kitchen and bathroom in the Suite. He understood that if he had exclusive use of a kitchen and a bathroom, that the rental unit had a separate entrance, and if he paid a security deposit, that the Act would apply.

The tenant testified, and the landlord agreed, that he moved some of his furniture into the living space in the Suite and as well as hung some art on the walls.

The tenant argued that his use of the Suite, and the fact that he has exclusive use of the kitchen and bathroom located therein, means that the Act applies, and that I have jurisdiction to hear the parties' applications.

Section 4 of the Act states:

**What this Act does not apply to**

**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,

As such, I must determine if the landlord, under the tenancy agreement, is entitled to use the bathroom and kitchen in the Suite. If he is entitled to use these facilities, then the living arrangement would fall under section 4(c) of the Act, and I would not have any jurisdiction to hear these applications.

In order to determine if the landlord was entitled to use the basement kitchen and bathroom, I must look to the tenancy agreement. The tenancy agreement clearly states, “renting room on ground level of main house”. The parties agree that they initialed beside this term. I must then determine what this term means.

The landlord argued that the plain meaning must be given to the words of the term, and as such I must find that the tenant was renting the bedroom only, and that, therefore, the landlord was permitted to use kitchen and bathroom in the Suite.

The tenant argued that this term should not be interpreted to mean that that he only rented the bedroom, but rather that the landlord was permitted to enter the Suite to use the laundry and mechanical room whenever he wanted. He argued that his use of the bathroom and kitchen was exclusive and supports this interpretation.

Respectfully, the words of the term do not support the tenant’s interpretation. The language used in the agreement is clear and unambiguous: the tenant is “renting [a] room on [the] ground level of [the] main house.” I cannot see why, if the parties intended this term to mean only that the landlord could access the rental unit to use the laundry and mechanical room, the parties did not include a term which explicitly stated this (for example, “the landlord may, without notice to the tenant, enter the rental unit for the purpose of using the laundry facilities or using the mechanical room.”)

Additionally, by writing “renting room on ground level of main house” is one of the clearest ways of stating that the tenant is only renting a single room. It is not necessary for a tenancy agreement to further clarify the meaning of the term by listing all the areas of the residential property that are *not* being rented to a tenant, or to lists all the common areas that a tenant is permitted to use. The language of the term is clear enough.

Further, I find that by initialing beside the term, the tenant has indicated that he has turned his mind to it. If there was any doubt as to the terms meaning to him (and how could there not have been, if his understanding of the meaning of the term defied the plain language of the term itself), he should have raised it with the landlord prior to signing the tenancy agreement, so that the term might be reworded.

As such, I find that when the parties entered into the tenancy agreement, they agreed that the tenant was renting only the bedroom for his exclusive use. It was an implied term that the tenant would have use facilities located in the Suite. I do not find that this implied term granted exclusive use of the Suites' facilities to the tenant (if that were the case, the tenancy agreement would have stated that the tenant rented the Suite, and not just the bedroom).

I find that the landlord was entitled to use all parts of the Suite, excluding the bedroom, during the course of the tenancy. As such, I find that the kitchen and bathroom located in the Suite were shared facilities of the tenant and the landlord. Accordingly, pursuant to section 4(c) of the Act, the Act does not apply to this contractual relationship.

I do not have jurisdiction to adjudicate the parties' 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: December 16, 2020

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Residential Tenancy Branch