



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; 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.

Both parties confirmed their email addresses for service of this decision.

### Preliminary Issue- Jurisdiction

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 agree that for the majority of this living agreement, the applicant and the respondent shared a kitchen and a bathroom. The respondent testified that she left the country on October 28, 2021 but left her personal belongings at the subject property and retained full rights of use and access to the property after she left. The applicant testified that the respondent left in mid November 2021. The applicant confirmed that the respondent's personally property and possessions remained at the subject property and that the respondent retained her right of access to, and use of the property. The

applicant testified that he moved out on December 24, 2021. The respondent testified that the applicant moved out on December 25, 2021.

I find that because the respondent and the applicant shared a kitchen and a bathroom at the start of their living agreement, the parties entered into a roommate agreement and not a tenancy agreement. I find that because the respondent maintained her right of access to, and use of the property after she left the country, the roommate agreement did not transition into a tenancy agreement. In a tenancy agreement, the tenant is entitled to exclusive occupancy of the subject rental property, which is not the case in this circumstance. Based on the testimony of both parties, I find that the applicant and the respondent were roommates who shared a kitchen and bathroom; therefore, pursuant to section 4(c) of the *Act*, the *Act* does not apply. The applicant's claim is dismissed without leave to reapply. The parties were advised that the appropriate tribunal for roommate claims is the Civil Resolution Tribunal.

### Conclusion

I dismiss the applicant'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 24, 2022

---

Residential Tenancy Branch