



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNDCT, MNSD

### Introduction

This hearing was convened as a result of an application under the *Residential Tenancy Act* (the “Act”) for:

- compensation of \$7,800.00 for monetary loss or money owed by the Respondent pursuant to section 67 of the Act; and
- return of the security deposit and/or pet damage deposit in the amount of \$600.00 pursuant to section 38 of the Act.

The Applicant and the Respondent attended this hearing and gave affirmed testimony. The Applicant was represented by articulated student RE with counsel KM observing.

### Jurisdiction

According to section 4(c) of the Act, the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The Respondent is the owner of the subject property. According to the Respondent, she had rented a room in her unfinished basement to the Applicant. The Respondent explained that the Applicant entered his space through a shared sunroom on the upper floor, which opens to the Respondent’s master bedroom and another bedroom. The Respondent’s daycare room and the parties’ shared laundry room were also in the basement. The downstairs bathroom is connected to the laundry room outside of the Applicant’s room. The Applicant had his own fridge, microwave, and hot plate inside an adjacent storage area, but no running water or hookup for stove.

The Respondent submitted a tenancy agreement into evidence. This agreement is in the standard Residential Tenancy Branch form. However, section 3(b) of this agreement includes a note which states: "bar fridge & microwave can be provided, shared kitchen, semi-private bath". In addition, section 1 of the addendum to this agreement states as follows (portions redacted for privacy):

1. [Respondent], landlord, agrees to provide a bar fridge and microwave if needed to [Applicant]. Full kitchen facilities including dishwasher are upstairs of residence. Laundry facilities are to be shared and available for use are a washing machine and dryer. Downstairs washroom with discretion is to be shared with Daycare Children and landlords own children in cases of urgency. (sic)

The Respondent stated that she had emailed this agreement to the Applicant, but only received one signed page back from the Applicant. A copy of the signed page is submitted into evidence.

The Respondent testified that the Applicant had accessed the upper areas of the house on a weekly basis. The Respondent indicated that the Applicant would join the Respondent's family in the living room for movie nights and leave items for the Respondent on the kitchen counter.

The Applicant denied that the parties had shared kitchen or bathroom facilities.

The Applicant's evidence was that he did not have a copy of the parties' agreement. During the hearing, it was submitted that the Tenant only had the signed page of the parties' agreement and not the remaining pages, and that the Applicant did not recall which version of the agreement he had signed. The Applicant noted that he did not initial the addendum page.

The Applicant submitted a shelter information form for assistance purposes signed by the Respondent, which indicates that the parties did not share a kitchen or bathroom.

The Applicant submitted that the Respondent's daycare children required permission from the Applicant to use the downstairs bathroom. According to the Applicant, one child used the bathroom in the beginning, but the children stopped using the downstairs bathroom after the Applicant sent them upstairs.

The parties disagreed as to who had completed the shelter information form. The Respondent indicated that she did not recall filling out this form.

Based on the evidence presented, I find on a balance of probabilities that the parties had signed the agreement submitted by the Respondent. I find the page signed by the parties confirms that there was a one-page addendum with three terms, which is consistent with the addendum submitted by the Respondent. I find the Applicant has not put forward any other version of the agreement which the parties may have signed.

I note I do not find it is necessary for the Applicant to also sign the addendum page, as the signed page specifically refers to and incorporates the addendum.

In addition, I do not find any statement in the shelter information form to be capable of overriding the parties' actual agreement.

I find the terms agreed to by the parties stipulated that the upstairs kitchen and the downstairs bathroom would be shared. I find the Applicant retained access to the upstairs kitchen throughout the duration of his stay. I find that contractually, the Applicant was required to share the downstairs bathroom with the Landlord's children and daycare children, although the Applicant may have discouraged this in practice.

Under these circumstances, I find the parties' arrangement was one in which they had shared kitchen and bathroom facilities. I do not find the evidence to demonstrate that the parties' agreement was an attempt to contract out of the Act. I conclude that pursuant to section 4(c) of the Act, the Act does not apply in this case.

My authority is only with the Act, and since the Act does not apply, I decline jurisdiction to hear and decide any matters relating to this dispute.

### Conclusion

Pursuant to section 62(1)(b) of the Act, I decline jurisdiction with respect to 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 02, 2023