



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, PSF, FFT, MNRL-S, FFL

### Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On January 18, 2023, the Applicant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking the provision of services and facilities pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 7, 2023, the Respondent applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

J.X. attended the hearing claiming to be the Applicant. It was only discovered, at the end of the hearing, that this person was being untruthful with his identity once the Respondent indicated that this person that was speaking was not, in fact, the Applicant. Regardless, the Respondent attending the hearing as well.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Prior to discussing service of documents, the Respondent advised that he was the owner of the property, that he lived there, and that he shared the kitchen and bathroom with the Applicant. He was also cautioned, and he confirmed that he understood the consequences of providing fraudulent testimony.

J.X., who was posing as the Applicant at the time, advised that the Respondent did not live there. However, while he claimed that he had a Land Title document which proved that the Respondent owned another property, this was not submitted as documentary evidence. Even if this were submitted, this would not necessarily prove that the Respondent did not live at the dispute address. Furthermore, J.X. could not explain why he did not submit any other documentary evidence for consideration that would substantiate his testimony that the Respondent did not live at the dispute address.

Regardless, it was brought to J.X.'s attention that the Respondent submitted a previous Decision of the Residential Tenancy Branch, dated March 20, 2023, where it was determined that the *Act* did not have jurisdiction over this tenancy because the Applicant shared the kitchen or bathroom with the owner/Respondent of the property (the relevant file number is noted on the first page of this Decision). The only response that J.X. had was that the Arbitrator at the previous hearing did not understand the Applicant's testimony at that hearing.

When reviewing the testimony of the parties, given that the Arbitrator in the previous hearing determined that the Applicant was "evasive and vague", and given that throughout the majority of the hearing, J.X. was untruthful about his identity and only reluctantly revealed himself not to be the Applicant after being exposed by the Respondent, I find that the Applicant and J.X. are not credible. It was obvious that J.X. was attempting to pretend to be the Applicant to advance a false narrative and portray a scenario that simply did not exist.

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."

In my view, after hearing testimony from both parties, I am satisfied that the Respondent owned the property. As well, I find that both the Applicant and Respondent did have access to and did share the bathroom and/or kitchen on the property. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations where a tenant shares a bathroom or kitchen facilities with the owner of the accommodation. Consequently, I find

that even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy. Therefore, I have no jurisdiction to render a Decision in these matters.

### Conclusion

I decline to hear these matters as I have no jurisdiction to consider these Applications.

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 2, 2023

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Residential Tenancy Branch