



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNDC OLC RPP OPT

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 24, 2015, to obtain an Order of Possession for a tenant; a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and Orders for the Respondents to comply with the Act, regulation or tenancy agreement and to return the Applicant's possessions.

The hearing was conducted via teleconference and was attended by the Applicant and the Respondents. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Does this matter fall within the jurisdiction of the Residential Tenancy Act (the Act)?

### Background and Evidence

The matter of jurisdiction was raised by the Respondents who argued that this matter related to shared accommodations with the owners of the property and therefore, did not fall under the jurisdiction of the Act. The Respondents pointed to section 4(c) of the Act which stipulates that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

In support of their position, the Respondents provided a written statement outlining the terms of their verbal accommodation agreement which provided for a shared kitchen with the owners,

plus culinary items and food. They also provided a photograph in evidence of the studio suite which the Applicant occupied and which clearly showed that there were no cooking facilities.

The Respondents described the property as consisting of a single detached house that was registered as an upper and lower duplex with two separate addresses and a separate studio located about 5 yards away from the detached house. The male Respondent was owner of the property and he resided in the lower duplex with his wife. They stated that the studio consisted of one large room with a fridge which led into another room and a bathroom. There were no kitchen cabinets, no kitchen sink, and no stove or oven. They submitted that they had entered into a verbal agreement for the Applicant to occupy the studio with shared access to their kitchen.

The Applicant testified that the property was as described by the Respondents. She confirmed that she occupied the separate studio and that she did share the kitchen with the Respondent owner as the studio did not include any cooking equipment or kitchen cupboards or sink.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

As noted above, Section 4(c) of the Act which stipulates that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. The undisputed evidence in this matter is that the Tenant occupied the studio in a shared accommodation agreement which provided that she would share use of the kitchen with the owners.

Based on the above, I declined to hear these matters for want of jurisdiction and the application was dismissed, without leave to reapply. The application may seek remedy through the Court of competent jurisdiction.

### Conclusion

I HEREBY DISMISS this application, 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: March 16, 2015

