



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 21, 2015, seeking to obtain a Monetary Order for: the return of all or part of the security deposit.

The hearing was conducted via teleconference and was attended by the Applicant. No one was in attendance on behalf of the Respondent. The Applicant provided affirmed testimony that the Respondent was served notice of this application and this hearing by registered mail on April 24, 2015.

Canada Post tracking information for two registered mail packages were submitted into evidence. The Applicant stated that she had only sent one registered mail package which was the tracking number attached a paper listing her name and telephone number. Canada Post tracking information confirms that Canada Post attempted delivery of the package on April 24, 2015 and a notice card was left that date to advise the Respondent they could pick up the registered mail.

The tracking information also confirms Canada Post gave a second and final notice for the package on April 27, 2015 indicating that the registered mail package was available for pick up.

As of May 22, 2015 the Canada Post tracking information confirms that the Respondent still did not pick up the registered mail and that the package was being returned to the Applicant.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the undisputed evidence of the Applicant, I find that the Respondent was sufficiently served notice of this application and hearing in accordance with Section 89(1) (c) of the Act. Accordingly, I continued in absence of the Respondent.

Issue(s) to be Decided

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

Background and Evidence

The Applicant submitted affirmed testimony that she entered into a verbal tenancy agreement with another tenant that began on January 4, 2015. She agreed to rent a bedroom and have shared access to the common areas for \$1,000.00 per month and she paid the Tenant a \$500.00 deposit.

The Applicant stated that she had no interaction or contact with the owner or the property manager and she did not enter into any written agreements with either of them. Her agreement was verbal and involved herself and the tenant who also resided in the rental unit. She said she dealt with her tenancy issues with the tenant and that she paid her rent directly to the tenant.

Analysis

The *Residential Tenancy Act (the Act)* and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 1 of the Act defines a landlord, in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) **a person, other than a tenant occupying the rental unit, who**  
[emphasis added]
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

[My emphasis added by bold text]

*Policy Guideline*<sup>13</sup> defines an occupant as follows:

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.*

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

The evidence supports the Applicant entered into a verbal agreement with an existing tenant to occupy a bedroom and share the common areas of the house with the tenant and other occupants.

In the absence of a written agreement with the owner or property manager, I conclude that there was insufficient evidence to support that the Respondent had any authority to act as an agent for the owner or landlord. Rather, the evidence pointed to the fact that the Respondent was himself, a tenant

Based upon the aforementioned, I find the Applicant to this dispute does not meet the definition of a tenant; rather she was an occupant. Thus, there is not a tenancy agreement in place between the Applicant and Respondent to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that the Applicant and Respondent have no rights or obligations to each other under the *Residential Tenancy Act*. Therefore, I do not have jurisdiction to resolve a dispute between the parties, and the application was dismissed for want of jurisdiction.

**Conclusion**

The application was dismissed for want of jurisdiction. The Applicant is at liberty to seek remedy through the Court which holds competent 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: September 28, 2015

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Residential Tenancy Branch

