



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

### **SERVICE**

The landlord did not attend the hearing and the tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by putting it in her mail box and posting it on her door. I find the documents are not served in accordance with 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

Only the tenant attended the hearing; although the documents were not legally served according to section 89 of the Act which provides an Application must be served in person or by registered mail, the tenant was given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of \$250 on February 11, 2015 (receipt provided) and agreed to rent the unit for \$500 a month. However she never moved in due to health issues.

When questioned, the tenant said she had agreed to the tenancy of a room in the same home as the landlord owner where she would share kitchen facilities although she would have her own washroom.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

Although the Application was not legally served, I continued the hearing as it appeared the Act did not apply to the situation and I did not want to waste the tenant's time in having her reapply.

Section 4(c ) of the Act states that the *Residential Tenancy Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. I find the weight of the evidence in this case is that the tenant would share kitchen facilities with the landlord owner. Therefore, the Act does not apply and I find I have no jurisdiction in this matter. The tenant may have recourse in another forum.

**Conclusion:**

I find I have no jurisdiction in this matter.

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 03, 2015

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Residential Tenancy Branch

