



# 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 pursuant to the *Residential Tenancy Act* (the “Act”) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The respondent did not attend this hearing, although I waited until 1:42 p.m. in order to enable the respondent to connect with this teleconference hearing scheduled for 1:30 p.m. The applicant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The applicant testified that on May 27, 2016, a copy of the Application for Dispute Resolution including the Notice of Hearing and evidence package was sent to the respondent by registered mail. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the respondent was served with the Application for Dispute Resolution and Notice of Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the respondent.

### Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the applicant entitled to a return of all or a portion of the security deposit including the filing fee for this application?

### Background and Evidence

The rental unit was shared accommodations with the owner who is the respondent. The applicant rented a bedroom and bathroom in the downstairs portion of the house. The applicant moved in as a roommate with the respondent on February 1, 2016. The kitchen and living room area was shared with the owner. The applicant paid a \$150.00 security deposit and a \$150.00 pet deposit and paid a monthly rent of \$550.00.

### Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Section 4(c) of the *Act* stipulates that the *Act* does not apply to:

*(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,*

The tenant testified that she shared the kitchen facilities with the owner of the accommodation. Therefore, I find that the Act does not apply to this living accommodation.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I find that I do not have jurisdiction over 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: November 21, 2016

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Residential Tenancy Branch