



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNSD FF

### **Introduction**

Both parties attended the hearing and the tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and by email with her forwarding address. The landlord agreed they had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies 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 plus other expenses for postage and lost income; and
- b) To recover the filing fee for this application.

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

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act and compensation for other expenses?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of \$600 on November 1, 2015 (receipt provided) and agreed to rent the unit for \$1200 a month. The tenant vacated the unit on April 30, 2016 and provided her forwarding address in writing on May 13, 2016. The landlord agreed these facts were correct. The tenant's deposit has never been returned and she gave no permission to retain any of it.

The landlord said this matter does not fall under the Act as they, as owners of the home, use the whole home including the kitchens and bathrooms. He said they rent rooms through various means including airbnb but they never intended to have their operation come under the Act so they take care to use the whole house. They do not reside there all the time but are there often and using the whole house. He said the applicant rented a room there.

The applicant contended she was a tenant under the Act. There was a communal kitchen shared with roomers in a separate area of the home and she never saw the landlords in it and does not believe they used it. They had another kitchen and bathroom.

The landlord said the home has 5 bedrooms and he uses the loft. The home has 2 kitchens and 3 bathrooms and they make sure they use all of them freely as they do not want to come under the Act. He said the applicant and other occupants were not always present when they were

using the kitchens as all had different work hours but he has photographs of making meals in all the kitchens. He offered to settle the matter with the tenant but she refused.

The tenant claims twice her security deposit refunded plus lost employment income for time in handling the dispute plus postage costs.

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

**Analysis:**

The Residential Tenancy Act provides in section 38 that a landlord must refund the security deposit or make an application to claim against it within 15 days of the later of the tenant vacating and providing a forwarding address in writing.

However, I find section 4 of the Act states 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. I find the weight of the evidence is that the owners shared the bathrooms and kitchen facilities of the whole home. I find this more credible as the owner said they did this deliberately so the Act would not apply to their business arrangements. While the tenant alleged the landlords' statements were false, she did not provide sufficient evidence to support her allegations. I find the evidence is that she was not there all of the time and it is possible that the landlord was using the extra bathrooms and kitchen as they asserted.

As explained in the hearing, section 72 of the Act allows recovery of the filing fee but not other costs of the application such as postage and time off work.

I find I have no jurisdiction on this matter as the Act does not apply.

**Conclusion:**

I dismiss the tenant's application without leave to reapply. I find she is not entitled to recovery of her filing fee due to lack of success.

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: December 07, 2016

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Residential Tenancy Branch

