



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD OLC FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. Each confirmed receipt of each other's Application for Dispute Resolution and evidence by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To find I have lack of jurisdiction pursuant to section 4 of the Act; or in the alternative for a monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38;
- e) An Order that the landlord obey the provisions in the Act; and
- f) To recover the filing fee for this application.

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

Do I have jurisdiction in this matter?

If so, has the landlord proved on the balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

If so, are the tenants entitled to twice the security deposit refunded and to recover filing fees for the application?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced September 1, 2016 and the tenants vacated October 22, 2016. They jointly paid rent of \$2250 and a security deposit of \$1125. The landlord's advocate submitted that section

4 of the Act applies to this situation as these were homestay students sharing a house with the owner of the home who is named as the landlord. The landlord described the layout of the home. She said there was only one kitchen which they all shared. There was one main bathroom and a lesser bathroom which they all shared. She said she sometimes has young homestay students and she cooks for them and charges \$950 a month but the three occupants who filed this application did their own cooking. She said her mother is seriously ill and she has had to be temporarily absent from the home at times to look after her. However, she emphasized that this is her primary residence and she shares bathroom and kitchen facilities with her guests. She also accepts Airbnb guests. The advocate submitted that if section 4(c) of the Act does not apply, section 4(e) would apply as the living accommodations are occupied as vacation accommodations through air bnb. In the alternative, if the Act is found to apply, the landlord submits a claim for damages.

The tenant said that this was not a homestay agreement and the landlord was not staying there while they were there. The landlord and her advocate said she is a busy woman active in the community so the students may not have observed her when she was home. They are at school most of the day. She also reiterated that she was absent for a time while caring for her mother.

In evidence are interact transfers of payments of rent and deposits, a forwarding address, registered mail receipts, texts regarding unpaid heating costs, a damage claim by the landlord and written statements and submissions of the parties..

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

### **Analysis**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible and prefer it to the evidence of the tenant on the issue of whether or not section 4 of the Act applies to this situation.

I find the landlord is an owner of the premises and she shared a kitchen and/or bathroom with the tenants or occupants. I find section 4 of the Act states specifically that the Act does not apply to:

*s. 4 (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.*

I find it credible that the owner/landlord in this case shared kitchen facilities as there was only one kitchen and she sometimes cooks for homestay students for a higher fee.

Therefore, I find I do not have jurisdiction in this matter and I dismiss the applications of both landlord and tenant without recovery of filing fees.

As I find I lack jurisdiction pursuant to section 4(c), I decline to consider whether or not section 4(e) is applicable.

**Conclusion:**

I dismiss the applications of both the landlord and the tenants in their entirety without leave to reapply and I find they are not entitled to recover filing fees for their applications 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: March 15, 2017

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Residential Tenancy Branch