



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- the return of the tenant's security deposit, pursuant to section 38; and
- repayment of the filing fee, pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses

The tenant testified that she served the landlord the notice of dispute resolution package (the "package") by registered mail on December 21, 2017. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The tenant testified that the package was returned to her because the landlord did not come to pick it up. The landlord denied receiving a notice of registered mail from Canada Post and that they only learned of this hearing on June 1, 2018 when she received an email from the Residential Tenancy Branch regarding the scheduling of this hearing.

Section 89 of the *Act* states that an application for dispute resolution may be served by sending a copy by registered mail to the address at which the person resides. Section 90 of the *Act* states that a document served in accordance with section 89 of the *Act*, if served by mail, is deemed served on the 5<sup>th</sup> day after it is mailed.

In this case, the tenant mailed the dispute resolution application on December 21, 2017. While the landlord denied receiving the notice of registered mail, the landlord has not provided sufficient evidence to rebut the deeming provisions found in the *Act*. The landlord is therefore deemed to have received the application for dispute resolution on December 26, 2017, five days after its registered mailing.

### Preliminary Issues

Section 4(c) of the *Act* states that this *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The tenant testified that she shared a kitchen with the landlord. Therefore, pursuant to section 4(c) of the *Act*, I find that I do not have jurisdiction to hear this matter.

### Conclusion

I dismiss the tenant's application without leave to reapply.

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: June 18, 2018

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Residential Tenancy Branch