



# 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 an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- return of a security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The applicant's agent M.K. attended on behalf of the applicant.

As both parties were present, service of documents was confirmed. The respondent confirmed that she was in receipt of the applicant's application and evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction under the *Act* to consider this application for dispute resolution?

If so, is the applicant entitled to the return of a security deposit, pursuant to section 38 of the *Act*?

### Background and Evidence

In this case, the dispute address is a townhouse with one kitchen and two bathrooms. The respondent testified that she is the owner of the dispute address.

Both parties agreed that the applicant moved into the dispute address in November 2017, paid a security deposit of \$450.00, paid monthly rent in the amount of \$900.00 and moved out at the end of March 2018. The \$900.00 rent entitled the applicant to the use of a furnished room and use of the shared kitchen and laundry facilities.

Both parties agreed that the respondent lives in the dispute address and that the applicant shared a kitchen with the applicant when he lived there.

The applicant submitted text messages into evidence regarding communications between the applicant and respondent pertaining to the return of a security deposit and plumbing repair costs. Although the applicant's agent testified that the respondent acted like a landlord, and that she had seen a written agreement between the applicant and respondent regarding the rental arrangement, I advised the applicant's agent that no such agreement had been uploaded into documentary evidence for this hearing.

The respondent stated that the rental arrangement was not a residential tenancy agreement and asserted that this was a roommate arrangement which does not meet the criteria for jurisdiction under the *Act*, pursuant to section 4(c) of the *Act*.

### Analysis

Section 4(c) of the *Act* reads in part as follows:

*This Act does not apply to...*

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

In this case, the respondent testified that she was the owner of that accommodation, and it was agreed by both parties that the respondent lived in the accommodation and shared a kitchen with the applicant.

Although the applicant's agent stated that the respondent "acted" like a landlord and treated the situation as if it were a residential tenancy arrangement under the *Act*, the applicant did not submit any documentary evidence to dispute the fact that the respondent resided in the dispute address with the applicant and shared kitchen facilities.

Based on the undisputed evidence, I find that the respondent is the owner of the dispute address, resided at the dispute address, and shared a kitchen with the applicant at the dispute address.

Under these circumstances and based on the evidence before me, I find that pursuant to section 4 of the *Act*, the *Act* does not apply to this rental arrangement. I therefore have no jurisdiction to render a decision in this matter.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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