



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Applicant under the *Residential Tenancy Act* (the “Act”) seeking:

- The return of a security deposit;
- Compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant and the Respondent, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application or the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the outset of the hearing I identified that the dispute address and the address for the Respondent are the same. The parties agreed that the Applicant rented a room in the basement of a single family home rented and occupied by the Respondent. The parties agreed that the Applicant had his own washroom but shared kitchen facilities with the Respondent; however, the Respondent stated that she is in fact a tenant of the rental unit and not a landlord under the *Act* as she rented the entire single family home from the landlord of the property. Although the Respondent stated that the landlord was aware that she sometimes rented out rooms to assist her with her rent, the Respondent

stated that she does not act as an agent for the landlord or rent these rooms out on behalf of the landlord. The Tenant subsequently acknowledged that he does not have a tenancy or any other form of agreement with the owner of the property or their agent(s). Based on the above, I find that I must determine whether I have the jurisdiction to hear this matter under the *Act* prior to considering the merits of the Application. Section 1 of the *Act* defines a landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The Respondent testified that she is not the owner of the property and there is no documentary or other evidence before me to demonstrate that she has legal authority to act as an agent for the owner or to permit occupation of the rental unit under a tenancy agreement on behalf of the owner or their agent(s). Further to this, the Tenant acknowledged that he does not have a tenancy or any other form of agreement with the owner of the property or their agent(s). As a result, I find, on a balance of probabilities, that the Respondent is not in fact a landlord under section 1 of the *Act* and that the Applicant was therefore an occupant of the rental unit and not a tenant under the *Act*.

The Legislation does not confer upon the Residential Tenancy Branch (the "Branch") the authority to hear all disputes regarding every type of relationship between two or more parties. As stated above, I have already found that the Applicant was not a tenant under the *Act* and as a result, I decline to hear this matter for lack of jurisdiction. I encourage the parties to seek independent legal advice in relation to 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 5, 2018

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Residential Tenancy Branch