



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT MNRT MNSD FFT

### Preliminary Issue – Rescheduling of this Hearing

I note that this hearing was originally scheduled for November 22, 2018 at 1:30 p.m. The Residential Tenancy Branch decided to reschedule this hearing to November 29, 2018 at 1:30 p.m. and contacted the parties to inform them of the rescheduled date and time. Therefore, the service of documents, referenced in the “Introduction” section of this Decision, pertains to the original Notice of Dispute Resolution Proceeding package documents provided to the applicant for the November 22, 2018 hearing and were required to be served on the respondent by the applicant, whereas it is the Residential Tenancy Branch’s responsibility for providing notice of a rescheduled hearing to a respondent when the hearing is rescheduled at the will of the Residential Tenancy Branch.

### Preliminary Issue – Amendment to the Applicant’s Application for Dispute Resolution

The landlord objected to H.L. as a named secondary applicant on the Application for Dispute Resolution as she is not on the tenancy agreement submitted into evidence by the primary applicant C.N. H.L. confirmed she is not listed on the tenancy agreement because at the time the tenancy agreement was signed in June 2018, she was listed as a tenant on another tenancy agreement which did not expire until September 2018. H.L. stated that she was a roommate/occupant with the applicant C.N. in this matter, who is the named tenant to the tenancy agreement. As H.L. was not listed as a tenant on the tenancy agreement under dispute in this matter, I find that she is a roommate/occupant and therefore has no rights or responsibilities under the *Act*. As such, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the applicant’s Application to remove H.L. as an applicant to this proceeding. H.L. continued to participate in the hearing in the role of assistant to the applicant C.N.

## Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- a monetary order for the cost of emergency repairs paid by the tenant pursuant to section 33 of the *Act*;
- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for the application from the landlord 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 was assisted by H.L., who primarily spoke on the applicant's behalf due to a language barrier. The respondent attended with his counsel.

As both parties were present, service of documents was confirmed. The applicant testified that they served the respondent and his assistant in person at the respondent's place of business with the notice of this hearing and evidentiary material on August 10, 2018. The applicant served a subsequent page of evidence by email to the respondent on November 8, 2018. The respondent acknowledged receipt of the notice of this hearing and all the evidence reportedly served by the applicant. The respondent served their evidentiary materials by email and courier on or about November 16, 2018. The applicant acknowledged receiving the respondent's evidence only a couple of days prior to the hearing. I confirmed with the applicant if they required an adjournment to review the materials or if they had sufficiently reviewed the materials to proceed. The applicant stated that they wished to proceed with the hearing.

Based on the testimonies of the parties, I find that the parties did not serve all documents for this hearing in accordance with sections 88 and 89 of the *Act* and the Residential Tenancy Branch Rules of Procedure, however, as both parties had all the documents before them and were prepared to proceed with the hearing, I deemed the documents sufficiently served for the purposes of this hearing pursuant to section 71(2)(c) of the *Act*.

## Preliminary Issue – Jurisdiction to Hear Dispute

The applicant testified that the rental unit was used for the purposes of a short-term vacation rental from the start of the tenancy on July 1, 2018 until the tenancy ended on July 19, 2018, at which point the applicant claimed that the respondent ended the tenancy without notice. The applicant confirmed that they obtained a short-term rental business licence and advertised the rental unit on “Airbnb”. The applicant confirmed that they did not reside in the rental unit but were planning to move in to the rental unit in September 2018. The applicant did not submit a Monetary Order Worksheet to set out their claim for monetary compensation, therefore I allowed the applicant to verbally explain the monetary claim, as follows:

Item	Amount
Refund of deposits collected from short-term rental client booked from the end of July through August 2018	\$9,001.60
Refund to the short-term rental client who had to be reimbursed for full cost of stay and placed into a hotel when respondent ended the tenancy while the vacation client was staying in the rental unit	\$940.90
Purchases to equip the rental unit (coffee maker, duvet, etc.)	\$747.17
Money owed by the respondent to a third party, which the applicants paid out	\$5,400.00
One Month's Rent as compensation for the tenancy ending without notice	\$2,700.00
<b>Total Claim</b>	<b>\$18,789.67</b>

Section 4 of the *Act*, outlines a tenancy in which the *Act* does not apply, as follows, in part:

- 4 This Act does not apply to
- ...
- (d) living accommodation included with premises that
    - (i) are primarily occupied for business purposes, and
    - (ii) are rented under a single agreement,
  - (e) living accommodation occupied as vacation or travel accommodation,
- ...

Regardless of whether the parties used a Residential Tenancy Branch tenancy agreement form to confirm their tenancy arrangement, this does not alter the fact that this rental unit was used primarily for business purposes to operate a vacation and travel accommodation business – not for residential purposes.

The *Act* specifically excludes tenancies whereby the living accommodation is primarily occupied for business purposes and/or used for vacation or travel accommodation. Accordingly, I find that I am without jurisdiction to hear this application for dispute because it is excluded by sections 4(d) and (e) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the Residential Tenancy Branch. Accordingly, I decline jurisdiction over this application.

Therefore, I dismiss the applicant's Application for Dispute Resolution in its entirety without leave to reapply.

The applicant may choose to seek legal advice or pursue remedy through the Small Claims Division of the Provincial Court.

### Conclusion

The *Act* does not have jurisdiction over this matter and as a result, I dismiss the Application in its entirety 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: December 17, 2018

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Residential Tenancy Branch