



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed December 12, 2018, wherein the Applicant requested return of her security deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on April 4, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters—Delivery of Decision

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Preliminary Matter—Jurisdiction

During the hearing the Landlord submitted that the Residential Tenancy Branch does not have jurisdiction over the dispute based on a prior Decision involving another renter in the same rental building and with the same terms.

I confirm I have reviewed that Decision (the file number is included on the cover page of this my Decision). The Arbitrator in that case applied section 4(c) which provides that the *Residential Tenancy Act* does not apply to tenancies wherein the *owner* of the property and the Tenant share a kitchen and a bathroom.

In the hearing before me, the Landlord confirmed he is not the owner of the property; as such section 4(c) does not apply.

The Landlord submitted that pursuant to *Residential Tenancy Branch Policy Guidelines*, the definition of “owner” (for the purposes of section 4) includes a Tenant who acts as a landlord by sublet. Such reasoning is flawed as while an owner may also be a landlord, a landlord is not, by definition, an owner unless they are the registered legal owner of the residential property.

*Guideline 19* deals with assignment and sublet. When a tenancy is assigned, the original tenant moves out of the rental unit and gives up all rights under their tenancy agreement as they permanently transfer their rights to a third party, who becomes the new tenant of the original landlord. Similarly, under a sublease agreement, the original tenant moves from the rental unit and transfers their rights under the tenancy agreement to a subtenant. In such a situation the original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit, grants exclusive occupancy to the sub-tenant, and becomes the “landlord” of the sub-tenant.

In the case before me, the Landlord, J.D., remained in the rental unit such that this was not a sublet, nor was it an assignment of his tenancy as provided for in *Guideline 19*.

In any event, I find insufficient evidence to support a finding that I have jurisdiction over this matter for the following reasons.

In the case before me, there was insufficient evidence before me to support a finding that the Respondent was acting as *agent* of the original landlord. As such, I find that the Applicant and Respondent resided in the rental unit together as *roommates*.

On the topic of occupants and roommates, *Guideline 19* further provides as follows:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

As I have not been provided sufficient evidence to support a finding that the Respondent acted as agent of his landlord, I find that the parties are roommates; consequently, the Applicant has no rights or responsibilities under the *Residential Tenancy Act*.

I wish to note that in the event I had found jurisdiction to hear this matter I would have dismissed the Application as the Applicant testified she had not provided the Respondent with her forwarding address in writing.

As section 38 of the *Act* provides, a tenant's right to return of their security deposit is not triggered until they provide their forwarding address in writing to the landlord, and pursuant to section 39, they forfeit their right to claim the deposit if the forwarding address is not provided within a year of the tenancy ending.

### Conclusion

The parties are roommates such that the *Residential Tenancy Act* does not apply. I therefore decline jurisdiction to hear 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: April 10, 2019

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Residential Tenancy Branch