



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution, made on July 5, 2019 (the "Application"). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Respondent return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Applicant and the Respondent attended the hearing at the appointed date and time and provided affirmed testimony. The Applicant testified that she served her Application and documentary evidence package to the Respondent in person, on or about July 8, 2019. The Respondent confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

### Preliminary Matters – Service of Evidence

The Respondent testified that she did not serve the Applicant with her documentary evidence, as she was under the impression that the Applicant would be able to view the Respondent's evidence online.

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondent's proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Applicant did not receive the evidence; therefore, the only evidence I will consider from the Respondent is their oral testimony during the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Applicant entitled to an order that the Respondent return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?
2. Is the Applicant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 22, 2018. Rent in the amount of \$1,200.00 was due to the Respondent each month. The Applicant paid a security deposit and pet damage deposit for a combined amount of \$1,200.00 which the Respondent continues to hold. The tenancy ended on April 12, 2019 once the Applicant moved out of the Respondent's home.

During the hearing, the parties testified and agreed that the Applicant shared a home with the Respondent. The Respondent stated that she owns the home and rented out a room to the Applicant. Both parties stated that they shared common areas together, including kitchen and bathrooms.

### Analysis

Section 4(c) of the *Act* confirms that the *Act* does not apply to living accommodation in which the owner shares bathroom or kitchen facilities with the Applicant. In this case, the Applicant testified that she shared common areas with the Respondent which included the kitchen as well as bathroom facilities.

Accordingly, pursuant to section 4(c) of the *Act*, I find the *Act* does not apply to the agreement between the parties. The Application is dismissed for lack of jurisdiction.

### Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicant should seek legal advice from their lawyer as to how to resolve this dispute.

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: October 11, 2019

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Residential Tenancy Branch