



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution by Direct Request, made on March 29, 2020 and adjourned to a participatory hearing (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
- an order granting recovery of the filing fee.

The Applicant, the Applicant's Representative G.C., and the Respondent attended the hearing at the appointed date and time. At the beginning of the hearing, the Respondent acknowledged receipt of the Applicant's Application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

### Preliminary Matters

At the start of the hearing, the Applicant requested an adjournment based on the fact that he did not receive the dial in number and access code to access the teleconference hearing until two days before the hearing. The Applicant stated that he contacted the Residential Tenancy Branch two days prior to the hearing at which point he received the required information. I confirmed that each party was present during the hearing and were prepared to proceed. As such, the Applicant's request for an adjournment based on the fact that he received the dial in numbers and access codes two days prior to the hearing was denied.

The hearing proceeded as scheduled and each party was 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, pursuant to section 38, and 67 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

At the start of the hearing, both parties testified and agreed that the Applicant rented a room in the Respondent's home that was also being occupied by the Respondent. The parties agreed that the Applicant and the Respondent shared common areas in the home including kitchen and bathroom facilities.

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 he 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: June 04, 2020

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Residential Tenancy Branch