



# 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 by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on February 28, 2020 (the “Application”). The Applicant sought return of double the security deposit and reimbursement for the filing fee.

The Applicant and Respondent attended the hearing. The Respondent indicated she was going to call witnesses if necessary. I did not hear from the witnesses given the decision as outlined below.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

### Preliminary Issue – Jurisdiction

It was clear from the materials submitted that the Respondent took the position that the Applicant was a roommate and therefore the *Residential Tenancy Act* (the “Act”) does not apply and the RTB does not have jurisdiction to decide this matter. Therefore, I asked the parties to address this at the outset.

In response to specific questions, the Respondent testified as follows.

She is a tenant of the rental unit and has a tenancy agreement with the owner of the rental unit. The tenancy agreement is only between her and the owner. She moved

into the rental unit in 2016 but took over the tenancy agreement in 2017. She has lived in the rental unit since.

The rental unit is an apartment with three rooms. She occupies one of the rooms. She rented one of the rooms to the Applicant. She lived at the rental unit while the Applicant lived there. She rented the room to the Applicant on her own accord, not as an agent for the owner. She does have permission to rent the rooms as long as she notifies the owner.

The Applicant agreed with the above. The Applicant did not dispute any of the above points. The Applicant testified that she did not have an agreement with the owner of the rental unit, paid rent to the Respondent and paid the security deposit to the Respondent.

The Applicant took the position that the *Act* does apply and the RTB does have jurisdiction in this matter. The Applicant based this position on what lawyers had told her and on information she obtained from the Small Claims Court website.

The *Act* applies to tenancy agreements between landlords and tenants. The definition of "landlord" in the *Act* is:

"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;

There is no issue that the Respondent is not the owner of the rental unit. There is no issue that the Respondent did not act as the owner's agent or on behalf of the owner when renting the room to the Applicant. The Respondent testified to these points. The Applicant did not dispute the Respondent's testimony on these points.

There is no issue that section (b) above does not apply.

Pursuant to section (c), the Respondent is specifically excluded from the definition of "landlord" as the Respondent is a tenant of the owner and occupied the rental unit while the Applicant lived there. Again, the Respondent testified to these points and the Applicant did not dispute the Respondent's testimony on these points.

There is no issue that section (d) above does not apply.

Therefore, the Respondent does not meet the definition of "landlord" in the *Act*. Therefore, the Applicant and Respondent did not have a landlord/tenant relationship that is governed by the *Act*. The *Act* does not apply to their relationship.

The Policy Guidelines further explain this as follows:

Policy Guideline 13 (page 4):

#### H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Policy Guideline 19 (page 5):

#### Occupants/roommates

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.

Policy Guideline 27 (page 6):

#### 4.DISPUTES BETWEEN TENANTS AND ROOMMATES

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

For example, if Tenant A enters into a tenancy agreement to rent a 2 bedroom rental unit from their landlord and then rents the second bedroom out to Tenant B, the RTA would not apply to a dispute between those tenants even if Tenant B has exclusive possession of the second bedroom. Under the tenancy agreement between Tenant A and the landlord, Tenant A is entitled to possession of the 2 bedroom rental unit. Since Tenant A is still occupying that rental unit, Tenant A is excluded by definition from being a landlord under the RTA. The director will decline jurisdiction to resolve these types of disputes.

(emphasis added)

The situation and examples outlined in the Policy Guidelines apply here. The Respondent is a tenant of the rental unit who has a tenancy agreement with the owner, who is the landlord. The Respondent rented out a room to the Applicant. The Respondent did not do so as an agent for the owner or on behalf of the owner. The

Applicant and Respondent were roommates. The Applicant had no rights or obligations under the *Act* because the *Act* did not apply to the relationship between the Applicant and Respondent. Given the *Act* does not apply, the RTB does not have jurisdiction to decide this matter.

Given the above, the Application is dismissed without leave to re-apply.

### Conclusion

The *Act* does not apply to the parties. The RTB does not have jurisdiction to decide this matter. The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 17, 2020

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Residential Tenancy Branch