



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSD, MNETC, RPP**

### Introduction

This hearing dealt with an application filed under the *Residential Tenancy Act* (the “Act”) for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- Compensation from the landlord related to a notice to end tenancy for Landlord’s use of property pursuant to section 51; and
- An order for the return of personal property pursuant to section 65.

Both the applicant and the respondent attended the hearing. The respondent acknowledged being served with the applicant’s Notice of Dispute Resolution Proceedings package and the applicant acknowledged service of the respondent’s evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*. Both parties confirmed that they were not recording the hearing.

### Preliminary Issue - Jurisdiction

At the commencement of the hearing, the respondent testified that he is not the tenant’s landlord. The rental unit is owned by another person, not named in these proceedings. The owner and the respondent’s brother are in a landlord/tenant relationship with the respondent’s brother being the tenant. The owner of the property is aware the respondent is an occupant of the rental unit, although the respondent is not named on the tenancy agreement and is not a signatory to it.

Both parties agree that the respondent continued to occupy the rental unit throughout the time the applicant lived there.

The respondent testified that the applicant in this case was a friend of his and she was allowed to move in with his brother's permission and the brother's landlord's knowledge. The respondent's brother never occupied the rental unit with them.

The applicant questioned why the respondent signed a tenancy agreement with her, knowing that he was not a landlord and did not have the right to do so. The respondent responded saying that he did so at the applicant's request in order for her to qualify for a housing subsidy.

### Analysis

Section 1 of the *Residential Tenancy Act* defines a landlord as follows:

**"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;

(emphasis added)

Residential Tenancy Policy Guideline PG-19 states the following under the heading, **Occupant/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.**

In the case before me, the respondent's brother is a tenant. The brother cannot be a landlord, by definition. The respondent himself isn't a tenant, and clearly isn't a landlord as defined by section 1 of the *Act*. The respondent is an occupant/roommate who has no rights or responsibilities under the *Residential Tenancy Act*. Likewise, the applicant is also considered an occupant/roommate as there is no tenancy agreement between the actual landlord (the respondent's brother's landlord) and herself. As such, the applicant has no rights or responsibilities under the *Residential Tenancy Act*.

Section 6 states that the rights, obligations and prohibitions established under this *Act* are enforceable between a landlord and tenant under a tenancy agreement. While an agreement signed between two occupants of a rental unit has been presented, there is no valid tenancy agreement between a landlord and a tenant before me. As such, I decline the jurisdiction to render a decision in this matter.

### Conclusion

The jurisdiction to render a decision in this matter has been declined.

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: February 28, 2022

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Residential Tenancy Branch