



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction and Preliminary Matter

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application for dispute resolution. In this application, the applicant filed on October 15, 2021 for:

- the return of their security deposit that the landlord is retaining without cause; and
- the filing fee.

Those present were affirmed and made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The respondent confirmed receipt of the applicant's Notice of Dispute Resolution Proceeding (NDRP) and evidence, and confirmed they did not submit or serve any responsive evidence.

The applicant submitted that on September 16, 2021 she paid the respondent a security deposit, and had planned to move into the respondent's apartment for November 1, 2021, "where the main lounge area was parted into a small room," but then changed her mind and did not move in.

The respondent testified that she was not a landlord. The respondent testified that she did not own the rental unit, was a tenant, and had advertised for a roommate. The respondent confirmed she would have been living in the bedroom of the rental unit, and the applicant occupying the living area.

Section 6(1) of the Act states that the rights, obligations, and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement.

[Policy Guideline 19](#) states the following regarding tenants and roommates:

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 the respondent was to remain living in the rental unit, and rent out a space within the rental unit to the applicant, I find the applicant would have been an occupant or roommate, and not a tenant.

As it does not contemplate a tenancy agreement between a landlord and a tenant, I find the dispute is not subject to the Act, and therefore does not fall within the jurisdiction of the Residential Tenancy Branch. Therefore, I decline to make a further decision on the matter.

### Conclusion

I decline to rule on this matter, as I have no jurisdiction to consider it.

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 *Residential Tenancy Act*.

Dated: June 15, 2022

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Residential Tenancy Branch