



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, MNETC, FFT

### Introduction

On December 13, 2021, the Applicant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a return of the security deposit pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Applicant and the Respondent attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Applicant advised that she served the Respondent with the Notice of Hearing and evidence package by hand on December 18, 2021. The Respondent advised that she received this when she got home and found it on her doorstep. The Applicant then confirmed that she served it by leaving it on the Respondent’s doorstep, as opposed to her earlier, contradictory testimony of serving it directly to the Respondent. However, the Respondent submitted that she did not have any opposition to how this was served to her, despite it being served in a manner that was not permitted under Section 89 of the *Act*. As such, I am satisfied that the respondent was sufficiently served with the Notice of Hearing and evidence package. Consequently, I have accepted this evidence and will consider it when rendering this Decision.

The Respondent advised that she served her evidence to the Applicant at the address provided on the Application. This was served by Xpresspost and she stated that the

tracking history indicated that this was not picked up, but would be returned to sender (the Xpresspost tracking number is noted on the first page of this Decision). Based on this undisputed evidence, I am satisfied that the Respondent's evidence was deemed to have been received by the Applicant five days after it was mailed out.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Applicant entitled to a Monetary Order for compensation?
- Is the Applicant entitled to a return of the security deposit?
- Is the Applicant entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 29, 2021, that rent was established at an amount of \$800.00 per month, and that it was due on the first day of each month. As well, a security deposit of \$400.00 was also paid. Furthermore, they also agreed that the Respondent owned the property, and that the Applicant shared a kitchen and/or bathroom with the Respondent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 4 (c) of the *Act* states that "this Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation."

In my view, after hearing testimony from both parties, I am satisfied that the Respondent owned the property. As well, I find that both the Applicant and Respondent did have access to and did utilize the kitchen and/or bathroom.

As such, I find that I am satisfied that the Applicant shared the kitchen and/or bathroom of the rental unit with the Respondent. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations where a tenant shares a bathroom or kitchen facilities with the owner of the accommodation. Consequently, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy. Therefore, I have no jurisdiction to render a Decision in this matter.

As the Applicant was not successful in this Application, I find that the Applicant is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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: July 18, 2022

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Residential Tenancy Branch