



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD-DR, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Applicant on September 2, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- The return of a security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on June 1, 2023, and was attended by the Applicant. All testimony provided was affirmed. The Applicant was advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Applicant was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Applicant was also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

The Applicant testified that the Notice of Dispute Resolution Proceeding (NODRP), which contains a copy of the Application and the Notice of Hearing, along with their documentary evidence, was personally served on the Respondent at the rental unit address immediately after receipt on September 21, 2022. As a result, and in the absence of any evidence or testimony to the contrary, I find that the Respondent was personally served with the NODRP on in compliance with section 59(3) of the Act and rule 3.1 of the Rules of Procedure. The hearing therefore proceeded in the absence of the Respondent or an agent acting on their behalf pursuant to rule 7.3 of the Rules of procedure.

Preliminary Matter - Jurisdiction

The Applicant stated that they found the listing for the room rental, which they were intending to rent for one month, on Facebook Marketplace, and are not sure if the name they have is the Respondents correct and legal name. The Applicant stated that they paid a \$700.00 deposit but never moved in and never received their deposit back. The Applicant stated that they are not sure if the person they corresponded with is the owner of the rental unit looking to rent out a room, a tenant of the rental unit looking for a roommate, or an authorized agent for the Landlord.

Based on the Tenants testimony, the lack of a written tenancy agreement, and the lack of clarity by the Tenant on who they were going to rent the room from, I am not satisfied that a tenancy subject to the Act existed between the Applicant and the Respondent. If the Respondent is the owner of the rental unit, and the Applicant was intending only to rent a bedroom from them, then any tenancy agreement between them would be excluded under section 4(c) of the Act. If the Respondent was a tenant of the rental unit looking for a roommate, then the Applicant would have been considered an occupant of the rental unit under the Respondents tenancy agreement, not a tenant under the Act, and therefore the Act would not apply. As no evidence was submitted by the Tenant that the Respondent meets the definition of a landlord under the Act, I therefore find that they do not.

As a result, I decline jurisdiction to hear and decide the Applicants claims, which I dismiss without leave to reapply. The Applicant may wish to seek independent legal advice in relation to this matter and how to proceed.

Conclusion

I decline to hear this matter due to lack of jurisdiction.

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: June 1, 2023

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Residential Tenancy Branch