



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

MNSDS-DR, FFT

### **Introduction**

This hearing was convened as a result of the applicant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for a return of their security deposit and recovery of the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated July 20, 2022, which should be read in conjunction with this decision.

The adjudicator said they were not able to determine there was jurisdiction to decide this dispute because the evidence showed that it was possible the applicant and the respondent shared a kitchen, and therefore ordered the direct request process be reconvened to a participatory hearing.

At the participatory hearing, the applicant attended; however, the respondent did not attend.

The applicant stated they served the respondent with the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on July 23, 2022. The applicant provided the Canada Post-stamped registered mail document containing the tracking number.

I find the applicant submitted sufficient evidence that the respondent was served the applicant's application and notice of this hearing in a manner complying with section 89(1) of the Act, by registered mail. The hearing proceeded in the respondent's absence.

The applicant was provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the applicant's submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

Does the Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, is the applicant entitled to monetary compensation?

#### Background and Evidence

The applicant submitted that their rental unit was a bedroom in a basement suite, in which they shared facilities with the respondent. The applicant submitted that the respondent is also a tenant at the property.

The applicant paid a security deposit of \$325 to the respondent and signed a written tenancy agreement.

#### Analysis

Section 1 of the Act defines a landlord, in relation to a rental unit, as the owner, the agent for the owner, or someone on behalf of the owner who permits occupation of the rental unit and performs duties under the Act or the tenancy agreement. Additionally, a landlord is someone other than a tenant occupying the rental unit, who is entitled to possession, exercises any of the rights of a respondent under a tenancy agreement or the Act, and is a former landlord.

I accept the evidence before me that the respondent here is a tenant of a landlord.

In addition, I find that the respondent cannot meet the definition of a landlord as defined by the Act. There is no evidence that the respondent has the authority to act on behalf

of the owner or as the agent and is excluded by subsection (c) of the definition of “landlord” in the Act.

Additionally, I find that the applicant is not a subtenant in these matters, as the respondent/tenant did not transfer their rights as a tenant under the tenancy agreement to the applicant.

*Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants provides as follows:

### **Occupants**

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, the evidence, I find, shows the respondent allowed the applicant to move into the premises and apparently share rent, under an agreement. Therefore, I find the applicant is an occupant as defined under the Policy Guideline and not a tenant and has no rights or obligation under a tenancy agreement.

For this reason, I find I cannot apply section 38 of the Act to this dispute, which deals with a tenant’s right to a return of their security deposit, as I find the applicant is not a tenant under the Act.

Therefore, I find this dispute does not fall within the jurisdiction of the Act as I find the applicant and respondent do not have a tenant-landlord relationship.

### **Conclusion**

Due to the above, I decline to accept jurisdiction of the applicant’s application and I find that this dispute between the parties is not as between landlord and tenant.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

I do not grant the filing fee as a result.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 30, 2023

---

Residential Tenancy Branch