



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, compensation for damages or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

### Issue(s) to be Decided

1. When the tenancy ended.
2. Whether the landlord has established an entitlement to a claim for damages or loss under the Act, regulations or tenancy agreement, and if so, the amount
3. Whether the landlord is entitled to compensation for loss of rent from the tenant.
4. Whether the security deposit may be retained by the landlord or returned to the tenant.
5. Award of the filing fee.

### Background and Evidence

The parties provided undisputed testimony that the tenant and another female (I identify as B.T.) and the landlord executed a tenancy agreement on July 15, 2008 with respect to the rental unit (the first tenancy agreement). The first tenancy agreement provides that rent of \$1,100.00 was due on the 15<sup>th</sup> day of every month and the tenancy was for a fixed term ending July 15, 2009. A security deposit in the total amount of \$550.00 had

been collected from both B.T. and the tenant on July 15, 2008. The tenant moved in to the unit in early August 2008 and discovered that two males were living in the rental unit instead of B.T. On September 29, 2008 the tenant sent a text message to the landlord informing the landlord that she was vacating the rental unit. The tenant placed a stop payment on her rent cheques for the months of October and November 2008.

The landlord testified that she was notified by B.T., in writing, that B.T. would not be moving in to the rental unit for personal reasons. B.T. paid the landlord for one-half of August and September's rent. The tenant also paid the landlord for one-half of August and September's rent. The landlord testified that B.T. found one male person to replace her as a tenant (the new tenant) and the landlord was not aware that a second male had also moved in to the rental unit. The landlord testified that she and the new tenant met at the end of August 2008 and that she approved of him as a tenant and they signed another tenancy agreement (the second tenancy agreement). The second tenancy agreement was not provided as evidence for the hearing; however, the landlord indicated that she used the same tenancy agreement as the first tenancy agreement and merely replaced B.T.'s name with the new tenant's name and the new tenant and the landlord signed the document. The second tenancy agreement also indicates that rent is \$1,100.00 per month; however, each co-tenant pays \$550.00 and the new tenant had only paid the landlord \$550.00 per month for October and November 2008. The landlord stated that B.T. assigned her portion of the security deposit to the credit of the new tenant. The landlord has since found another tenant for the month of December 2008 and is now collecting \$1,100.00 per month.

The landlord is seeking \$1,100.00 from the tenant which is comprised of the loss of rent she incurred for the months of October and November 2008. The landlord is also seeking to retain the tenant's security deposit for a fine the strata council is going to charge the landlord with respect to the tenant's friend urinating off the balcony. The

landlord had not yet received the fine and stated that she was uncertain as to the amount of the fine.

The tenant testified that she was unaware that the male tenant and the landlord had executed a tenancy agreement at the end of August. The tenant testified that the male tenant and the other occupant intimidated her and told her to leave on September 27, 2008. For her own safety the tenant's parents moved the tenant out of the rental unit on September 29, 2008.

The tenant objected to having to pay the landlord \$1,100.00 for loss of rent as the tenant was of the position that the tenant had not agreed to share the rental unit with the male tenant that the landlord accepted as a replacement tenant for B.T. The tenant did not dispute that one-half of the security deposit was applied to the new tenant at the instructions of B.T. and the tenant is seeking return of the one-half of the security deposit she paid.

### Analysis

Upon my review of the tenancy agreement executed by the tenant and B.T., I find that the tenant and B.T. were co-tenants. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement.

I have difficulty with what the landlord did with respect to the execution of the second tenancy agreement. I find that the tenant was not a party to the execution of the second tenancy agreement. I also find that the second tenancy agreement cannot be considered an amendment to the first tenancy agreement as the new tenant signed the second tenancy agreement and he was not a party to the original tenancy agreement. Therefore, it would appear that the landlord entered into two co-tenancy agreements, each requiring the payment of \$1,100.00 per month for the same rental unit.

Although I am satisfied that the landlord was not actually collecting \$1,100.00 per month under each tenancy agreement, the two tenancy agreements can not exist at the same time. Where there is a co-tenancy arrangement, there can be only one tenancy agreement in effect at any one time. That is the very nature of co-tenancy agreements. Therefore, I find that in entering the second tenancy agreement, the first tenancy agreement was extinguished. Since the tenant was not party to the second tenancy agreement I do not find the second tenancy agreement enforceable against the tenant.

My finding that the first tenancy agreement is extinguished with the execution of the second tenancy agreement is consistent with the section of Residential Tenancy Policy Guideline 13: *Rights and Responsibilities of Co-tenants* that addresses fixed term tenancies. The policy guideline provides, in part,

*“If the landlord and tenant sign a written agreement to end the lease agreement, or is a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect”.* [my emphasis]

As the first tenancy agreement has been found to be ineffective since the end of August 2008 because of the actions of the landlord, I do not find that the tenant is responsible for compensating the landlord for loss of rent for the months of October and November 2008. Therefore, the landlord's claim against the tenant for unpaid rent is dismissed without leave.

As the landlord could not verify the quantum of the anticipated fine because the strata council has not yet fined her, I dismissed the landlord's claim with respect to the anticipated fine with leave to reapply.

As the landlord's claims for compensation have been dismissed, I do not award the landlord the filing fee paid for this application.

Finally, where a landlord requests retention of a tenant's security deposit and the landlord's claims are dismissed, in accordance with the Residential Tenancy Policy Guideline 17: *Security Deposits*, I will award the tenant a Monetary Order for the security deposit and accrued interest. The award I provide to the tenant represents the portion of the security deposit paid by the tenant as the tenant did not dispute that the other half was dealt with between the landlord and B.T. I have calculated that the tenant is entitled to a Monetary Order in the amount of \$276.92 including interest.

The tenant must serve the Monetary Order upon the landlord to enforce payment and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord's application has been dismissed in accordance with the findings above.  
The tenant is provided with a Monetary Order in the amount of \$276.92.

January 7, 2009

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Date of Decision

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Dispute Resolution Officer