



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC MNSD O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the application to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for the return of double the security deposit, for other reasons, and to recover the cost of the filing fee from the Respondent for this application.

The parties appeared, provided affirmed testimony, and were able to provide their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

1. Was the applicant a Tenant of the respondent?
2. If so, did the respondent breach the Act, regulation, or tenancy agreement?
3. If so, has the applicant proven entitlement to monetary compensation as a result of this breach?

### Background and Evidence

The applicant testified she entered into a written tenancy agreement with the respondent and she moved into the rental unit sometime in May 2009, she was not certain of the exact date. Rent was payable on the first of each month in the amount of \$800.00 and she states she paid a security deposit of \$400.00 and that the respondent gave her a receipt for this payment. She was not able to locate the alleged receipt prior to the hearing.

She is seeking the return of double the security deposit because she has never received it even after sending the respondent a letter with her forwarding address in writing in April 2010. She is also seeking \$800.00 for the return of a double rent payment which she claims the respondent cashed two cheques for November's rent after claiming one had been destroyed in his wash.

The Landlord testified that the applicant was not his Tenant. He argued that he entered into a written tenancy agreement with a male Tenant and that this female was the tenant's girlfriend who later moved into the unit. He states that while the female may have provided cheques to pay for his tenant's rent he has never acknowledged her as a tenant and it is not his business to be concerned about who pays the tenant's rent as long as it is paid. He denies cashing two cheques for November 2010 rent and argues that the tenant and occupant snuck out of the rental unit leaving vehicles, a boat, and other possessions behind.

He wanted to point out that the applicant did not properly serve him with notice of today's hearing as she sent it regular mail to an address where he does not reside. He did not receive the Notice of hearing until the end of November 2010. He found an envelope left at his back door two days ago which he believes may be the applicant's evidence. He denies ever receiving his tenant's forwarding address in the mail and states he never collected a security deposit from the tenant or this applicant because they had a verbal agreement the tenant would paint two rooms in the rental unit in exchange for having to pay a deposit.

### Analysis

Both parties confirmed their evidence was not provided to the other in accordance with sections 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Therefore, I refuse to accept or consider the documentary evidence provided by both parties pursuant to 11.5(b) of the *Residential Tenancy Branch Rules of Procedure*. I did however consider the testimony provided by the parties during the teleconference hearing.

After careful consideration of the opposing testimony presented in the hearing, I accept that no tenancy agreement ever existed or was contemplated between the applicant and the respondent. As a result the applicant is considered an "Occupant" as defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

### **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.

On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a joint tenancy between the tenant and applicant, the *Act* does not apply.

Therefore, I find that this matter does not fall within the jurisdiction of the Residential Tenancy *Act*.

### Conclusion

I decline to hear this matter for want 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 *Residential Tenancy Act*.

Dated: December 17, 2010.

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Dispute Resolution Officer