



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RPP

### Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement; and for an Order for the landlord to return the tenants personal property.

Service of the hearing documents, by the applicant to the respondent, was done in accordance with section 89 of the *Act*, sent via registered mail on May 23, 2012. Mail receipt numbers were provided in the applicant's documentary evidence. The respondent was deemed to be served the hearing documents on, the fifth day after they were mailed as per section 90(a) of the *Act*.

The applicant and the applicants agent appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the respondent, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Is the applicant entitled to a Monetary Order for money owed or compensation for damage or loss?

- Is the applicant entitled to an Order for the respondent to comply with the *Act*, Regulations or tenancy agreement?
- Is the applicant entitled to an Order for the respondent to return the applicants personal property?

### Background and Evidence

The applicant's agent testifies that the applicant moved into this rental unit on or about August 08, 2011. This was an agreement between the parties for the applicant to share this unit as a sub-tenant and the respondent became the applicant's landlord. The applicant's agent testifies that the applicant did not pay rent or a security deposit but did put the gas, the cable and the respondents cell phone accounts all into her name and the applicant paid these bills each month along with purchasing the food for the applicant and respondent. The applicant's agent testifies that these utilities worked out to be more than the half share of the rent for this unit and these were paid in lieu of rent.

The applicant's agent testifies that on May 07, 2012 the applicant was removed from the unit by the police who would not let the applicant explain that she had a right to reside in the unit or to produce documentation such as a driving licence to show she resided in the unit. The applicant's agent testifies that the respondent had called the police and told them that the applicant was not on the lease and did not live there and he wanted her removed.

The applicant seeks to recover a nominal sum of \$100.00 from the respondent for a loss of quiet enjoyment and for the stress the applicant suffered being removed from the unit.

The applicant seeks an Order for the respondent to comply with the *Act* with regards to the return of the applicant's personal property and the applicant has provided a list of the items in evidence.

The applicant also seeks an Order for the respondent to return the applicants personal property.

The applicant has provided a letter from the owner and the respondents landlord stating that he was aware the applicant was living at the property since August, 2011 as a co-tenant with the respondent.

The matter of jurisdiction was discussed at length with the applicant.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the applicant and the applicant's agent. In the matter of jurisdiction the applicant has the burden of proof to show that a tenancy had been established between the applicant and the respondent. It is my decision that there is insufficient evidence to establish that a tenancy had been created and I find the arrangement is more in line with roommate or occupant as the applicant did not pay rent or a security deposit and there is no documentation pertaining to a tenancy agreement.

The applicant contributed financially by paying the gas account, the cable service and the respondents cell phone bill however although these accounts were in the applicants name this alone does not establish a tenancy as defined under the *Act*. It is not sufficient to merely show that the applicant paid some of the utilities or that the landlord and owner was aware the applicant resided in the unit.

As an occupant or roommate of the respondent the applicant would have no rights or obligations under the tenancy agreement in place between the respondent and the landlord and there is no evidence to show the applicant entered into a separate tenancy agreement either verbal or written to include the applicant as a tenant.

Therefore I decline jurisdiction in this matter and the applicant is at liberty to seek resolution in an alternative legal forum.

Conclusion

As no tenancy agreement has been established between these Parties I decline jurisdiction in this matter and the application is dismissed.

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: June 05, 2012.

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Residential Tenancy Branch