



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNR, MNDC, FF

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied requesting compensation in the sum of \$2,800.00 for damage to the rental unit, compensation for damage of loss under the Act, to retain the deposit and to recover the filing fee cost.

Both parties were present at the hearing. The landlord attended the hearing ten minutes after the start; at which point service and the details of the tenant's application was confirmed.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Each party confirmed receipt of the Notices of hearing served by the other.

### Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the landlord entitled to compensation in the sum of \$2,800.00 for damage to the unit and damages?

Is either party entitled to filing fee costs?

## Jurisdiction

During the hearing the following facts were established:

- In September 2011, the tenant took possession of a room in a house;
- The tenant paid the landlord a \$250.00 deposit;
- The landlord did not own the home, he had a tenancy agreement with the owner of the property;
- The tenant never paid rent directly to owner of the property;
- The landlord paid all of the rent directly to the property owner and was not acting as agent for the property owner.

The Act defines a landlord as follows:

***"landlord"***, in relation to a rental unit, includes any of the following:

*(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*

*(i) permits occupation of the rental unit under a tenancy agreement, or*

*(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*

*(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*

*(c) a person, other than a tenant occupying the rental unit, who*

*(i) is entitled to possession of the rental unit, and*

*(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

*(d) a former landlord, when the context requires this;*

From the evidence before me I find that the individual identified as the "landlord" on each application is in fact a tenant, who has a tenancy agreement with the owner of the property. The "landlord" then supplements his obligation to pay rent to the property owner, by renting out rooms in the absence of any direction of the property owner.

I find that the person identified as a landlord on each of the applications cannot meet the definition of a landlord as defined by the Act. He does not have the authority to act on behalf of the owner or as the owner's agent and is excluded by subsection (c) of the definition of "landlord" in the Act as he occupies the rental unit. 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, the Act does not apply.

Therefore, I find that the tenant in this case is an occupant. Occupants are 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.*

Therefore, I find that neither the applicant nor the respondent have any jurisdiction under this *Act*.

### Conclusion

Jurisdiction is declined

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 04, 2012.

---

Residential Tenancy Branch