



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Cost of emergency repairs;
2. Money owed or compensation for loss under the Act;
3. Return all or part of the security deposit; and
4. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary issue

During the hearing the issue of jurisdiction became apparent. In order to proceed with these matters, I must decide whether the Act has jurisdiction over the parties in order to proceed with their applications.

The tenancy began on March 5, 2013. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$375.00.

The landlord (TT), submitted that she is a tenant with a tenancy agreement with the owner of the property. The landlord stated that she occupies the rental unit, which she is entitled to possess and rented out a portion of the unit to help pay the rent.

The landlord stated that the tenant does not have any obligation to the landlord/owner of the property.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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 respondent under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The evidence of the (TT) was she pays rent to the landlord/owner under a tenancy agreement. The evidence of (TT) was that she is a tenant who occupies the rental unit, and rented a portion of that rental unit to help pay the rent. Therefore, I find the (TT) is a tenant and not a landlord as defined by the Act.

Section 13 of the Residential Tenancy Policy Guidelines states:

Where a tenant allows a person who is not a tenant to move into the premises and share 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 tenant (TT) allowed another person (DL) to move into the premises and share rent, under an agreement. A new tenancy agreement with the owner of the rental unit to have the (DL) added as a co-tenant was never entered into. Therefore, I find the respondent is an occupant as defined under the guideline and not a tenant and has no rights or obligation under the tenancy agreement or the Act.

As this is a dispute is between a tenant and an occupant and not a dispute between a landlord and tenant. I find that there is no jurisdiction for either party to proceed with their applications and I dismiss their applications without leave to reapply.

Conclusion

The applications of both parties are dismissed for lack 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: June 25, 2013

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Residential Tenancy Branch