



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP, MNDC

### Introduction

This hearing dealt with the applicant/ tenant's (hereafter "applicant") application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the respondent/landlord (hereafter "respondent") to return the tenant's personal possessions and a monetary order for money owed or compensation for damage or loss.

The applicant, his legal advocate, and the respondent appeared, after which I attempted to explain the hearing process; however due to the constant interruptions of the respondent, the respondent was placed on mute, but allowed to listen, while the applicant and his advocate testified, pursuant to Section 8.7 of the Rules of Procedure.

I note that the respondent was periodically allowed back into the hearing for testimony; however the interruptions continued throughout the hearing. I must also note that despite a caution, the respondent continued to speak at a very high volume.

I have also disallowed the respondent's documentary evidence as the legal advocate stated that they did not receive evidence from the respondent and the respondent could not confirm when it was sent, or that it was sent at all.

*Preliminary issue-* Due to the information contained in the applicant's application, at the outset of the hearing the issue of jurisdiction under the Residential Tenancy Act was explored and dealt with.

### Issue(s) to be Decided

Is the applicant entitled to monetary compensation and an order requiring the respondent to return his personal possessions?

### Background and Evidence

In their documentary evidence the applicant submitted that he rented a bedroom from the respondent, who herself was a tenant in a two bedroom apartment. The applicant

further submitted that he paid the respondent monthly rent and had paid her a security deposit.

The applicant confirmed that he understood the respondent did not own the rental unit, and that his rent supplemented the monthly rent paid by the respondent to her landlord.

The respondent stated she collected the applicant's rent, deposited that rent into her own account, and paid her landlord the monthly rent owed. The respondent further stated that the owner was aware that she rented out space to the respondent.

### Analysis

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;

I accept the evidence before me that the listed landlord, the respondent here, is a tenant of the owner/landlord ("owner") and that she supplements her obligation to pay rent to the owner by renting out a portion of her rental unit. The respondent collected rent cheques from the applicant, which were put into her account, and then paid rent to the owner.

In addition, I find that the respondent cannot meet the definition of a landlord as defined by the *Act*. There is no evidence that the respondent has the authority to act on behalf of the owner or as the agent and is excluded by subsection (c) of the definition of "landlord" in the Act as she occupies the rental unit. I find the owner's knowledge that the respondent was supplementing her income does not amount to being an agent for the owner.

Additionally, I find that the tenant does not have the rights conferred under the Residential Tenancy Act to a tenant; for instance, the applicant here cannot request a repair to the rental unit to the owner, or to allow a rent reduction, or request an order changing the locks, among other things.

As a result I find that 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, the *Act* does not apply.

Therefore, I find this dispute as between the parties listed here as tenant and landlord does not fall within the jurisdiction of the Act.

### Conclusion

I therefore decline to accept jurisdiction of the applicant's application.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

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: August 14, 2013

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Residential Tenancy Branch

