



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR, MND, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The respondent did not attend this hearing, although the hearing continued until 2:01 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30. The applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The applicant testified that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) with an effective date of October 26, 2014 on the respondent's bedroom door. He provided a witnessed proof of service document on October 16, 2014. On the basis of this evidence, I find that the tenant was deemed served with the 10 Day Notice pursuant to section 88 and 90 of the *Act* on October 19, 2014, 3 days after the posting. The corrected effective date for the 10 Day Notice is October 29, 2014.

The applicant testified that he served the respondent with the dispute resolution package, including Notice of Dispute Resolution hearing, on November 11, 2014 by sliding the notice under her bedroom door and posting a copy on her door. He also testified that the respondent acknowledged receipt of the package and told him, "I will be moving out soon". Based on the undisputed evidence of the applicant, I find the respondent deemed served with the dispute resolution package seeking an Order of Possession pursuant to section 89(2) and 90 of the *Act* on November 14, 2014, 3 days after posting. As section 89(1) of the *Act* does not allow an

application for a monetary Order to be served in the manner described by the landlord, I find that the landlord's application for a monetary Order has not been served to the tenant in accordance with the *Act*.

#### Issues to be Decided

Do I have jurisdiction under the *Act* to consider this application for dispute resolution?

#### Preliminary Issue of Jurisdiction

Prior to addressing the landlord's request for both an Order of Possession and monetary order for unpaid rent and damage, it is necessary to address whether this dispute falls under the *Residential Tenancy Act*.

The applicant is the sole tenant named on the residential tenancy agreement for this rental unit. He testified that he "believed the landlord was aware" the respondent was residing in the rental unit. He testified that he was uncertain if the respondent was identified on the residential tenancy agreement and he provided no copy of the tenancy agreement in his evidence package.

The applicant in this matter began his tenancy on December 1, 2013. The applicant and respondent moved in at the same time, at the beginning of the tenancy and had known each other prior to the start of this tenancy. He testified that he asked the respondent if she would like to move into the master bedroom as he was "strapped for cash". Monthly rent for the rental unit is set at \$1,300.00, payable on the first day of each month. The applicant testified that the respondent provided "approximately \$400.00 per month". He testified that this payment had not been made on a regular basis since the tenancy began. He testified that, from the beginning of this tenancy in December 2013, the respondent would sometimes provide cash to him throughout the month and sometimes, she would provide him with gas cards. The applicant had not created receipts with respect to the cash payments.

The applicant testified that the respondent has not provided him with any money in September, October or November. He stated that he paid the entire rental amount of \$1300.00 to the landlord for September, October and November. The applicant also claims \$75.00 over and above this unpaid rent as he testified he provided a damage deposit to acquire a fob to access the underground parking for the respondent.

With respect to the nature of the relationship between these two parties, they were acquaintances through a mutual party. The respondent has furniture, household items and decorative items as well as a Styrofoam Godzilla within the residence. Both the applicant and respondent had parking spots underground and their own fobs to access the parking area as well as the residence. Both the respondent and the applicant shared all common areas. The

applicant testified that the respondent's bedroom door had not been locked or separated from the rest of the rental unit in any form. However, he testified that, two months ago, when the relationship between the two deteriorated, the respondent installed a lock on her bedroom door.

Despite the applicant's claim that the respondent is a tenant in a sublet situation, the evidence at the hearing does not support this claim. There is no documentary evidence provided in the form of a written agreement between the two parties. The applicant testified that when both parties moved in to this rental unit, there was no discussion or agreement between the two with respect to;

- nature of obligations during sublet
- restrictions on access to individual rooms
- provisions for sharing or use of common items
- provision of a security deposit
- agreement on the amount of rent
- rent due date
- the length of time of the sublet
- or any other features to evidence an agreement between these parties under the *Residential Tenancy Act*.

The applicant testified that he changed the locks to the rental unit in September but that the respondent has now returned to the rental unit after the police became involved. The applicant testified that the respondent continues to reside in the rental unit although she has stated that she intends to move out.

### Analysis

Residential Tenancy Policy Guideline #19 defines assignment and subletting of rental units. It informs my decision with respect to this tenancy. It states,

A sublease is a lease given by the tenant ... of residential premises to a third person (the sub-tenant or sub-lessee). ... The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

The policy with respect to a sublease is that the sub-landlord (the original tenant) retains their obligations with respect to the tenancy. The policy also states;

A tenant may assign or sublet his or her interest in a tenancy agreement or lease with the consent of the landlord. ...

It is up to the original tenant to seek the landlord's consent – the proposed new tenant is not a party to the tenancy agreement until such time as the landlord has agreed to assignment or sublet, and the formal transfer is made.

The Residential Tenancy Act is clear in defining who the Act applies to. This policy provides further guidance with respect to situations outside of a standard tenancy agreement. A fundamental requirement, based on the guidelines, is an agreement. As with all tenancy matters, this agreement should be in writing. An agreement to sublet also requires the consent of the landlord. The applicant has been unable to provide sufficient evidence to show that the landlord consented to a sublet of this rental unit.

The testimony and documentary evidence of the applicant provides no evidence of any formal or informal understanding between himself and the respondent. Based on the evidence provided, there was no meeting of the minds between these two parties with respect to the nature of this living arrangement. The failure to document any agreement and the applicant's assumption of the total rental amount for the last several months establish a lack of any pattern of behavior by the respondent that would suggest a tenancy or sub-tenancy agreement.

I find that there is no tenancy or sublet between these parties. I find that the *Act* does not apply to this situation. I therefore have no jurisdiction to render a decision in this matter.

### Conclusion

I decline to determine this matter as I have no jurisdiction to consider this application.

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 5, 2014

---

Residential Tenancy Branch

