



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR

### Introduction

There are applications filed by both parties. The landlord seeks an order of possession and a monetary order for unpaid rent and recovery of the filing fee. The tenant seeks an order cancelling the notice to end tenancy issued for unpaid rent and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The tenant has confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The landlord has also confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing packages submitted by the other party, I am satisfied that both parties have been properly served under the Act.

Both parties clarified that the landlord entered into a signed tenancy agreement with the tenants, T.S. and J.M. as shown by the submitted copy of a signed tenancy agreement. This was for \$1,770.32 for a 3 bedroom unit. The landlord has applied for dispute against M.B. The tenant, M.B. was a roommate of the two tenants in one of the three bedrooms sharing the unit.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on February 1, 2015 at 11:59pm. The landlord shall receive an order of possession to reflect this agreement.

The above particulars comprise full and final settlement of all aspects of the dispute arising from this application for both parties.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order?

### Background and Evidence

The landlord states that a tenancy agreement was entered into on May 1, 2001 with T.S. and J.M. and that the rent at the end of the tenancy was \$1,770.32 for a 3 bedroom unit. Both parties agreed that the tenant, M.B. was not a named tenant, but a roommate.

The landlord states that the named tenants ended the tenancy agreement on November 15, 2014 and that T.

“always paid the rent (\$1,770.32) in full each month and that M.B. paid her 1/3 of total rent to T.”

The landlord states that a verbal agreement was made with the tenant, M.B.,

“...we agreed to let her continue her tenancy in December and pay her share of the rent (\$600) while we did the repairs and painting with the understanding that she would sign a lease taking responsibility for the whole suite as of January 2015.”

The landlord states that an agreement was made to accept the tenant's rent for use and occupancy only.

The landlord refers to an email to the tenant dated November 20, 2014 to “reclarify things.” It states,

As of January 1, 2015, the rent for the suite will be \$2,400/mo plus utilities. (\$100 per tenant/mo) (\$2200 with your discount)...your rent will be \$600.00 plus \$100 for utilities/mo. (\$700/mo)...We don't have a lease with you on it, so we'll need to new lease signed for January. As you are the existing tenant, it will be your responsibility to sublet the rooms, and make sure that the rent is covered each month...”

The tenant confirmed that this was an offer by the landlord that she did not feel comfortable signing and that no such agreement was made. The tenant also disputes that no agreement was made for use and occupancy only. The tenant thought that the \$600.00 was her rent share.

The landlord seeks a monetary claim of \$1,070.32 as the entire rent amount was \$1,770.32 and that the tenant had already paid a portion of \$700.00. Both parties confirmed that the tenant paid \$700.00 for January 2015.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant owed rent for the entire rental property as opposed to her share.

The landlord's claim is disputed by the tenant and the landlord relies on an email offering the tenant a signed tenancy agreement with the discussed terms. The tenant has disputed the claim confirming that an offer was made, but not accepted as the tenant did not feel comfortable signing this agreement.

It is clear based upon the joint submissions of both parties that after the tenancy ended with the tenants, T.S. and J.M. that the landlord verbally accepted the tenant, M.B. as a tenant. The landlord has not provided sufficient evidence to satisfy me that the tenancy was for use and occupancy only.

I find that the landlord has failed to provide sufficient evidence of an accepted agreement by the tenant entering into a new tenancy agreement for rent of \$1,770.32 for the entire tenancy. The landlord's monetary claim is dismissed.

The landlord having been partially successful is entitled to recovery of the \$50.00 filing fee.

### Conclusion

Both parties have mutually agreed to end the tenancy on February 1, 2015.

The landlord's monetary claim is dismissed.

The landlord is granted a monetary order for \$50.00.

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: February 2, 2015

