



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties appeared at the hearing with the landlord being represented by her mother, who is the owner of the rental unit. For ease of reference in this decision, I refer to the mother as the owner and the daughter as the landlord.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

Most of the facts are not in dispute. The tenancy began on September 1, 2014 and was set to run for a fixed term ending on August 31, 2015. The tenant was obligated to pay \$800.00 per month. The tenant had exclusive occupation over the living room in the unit and shared the kitchen, dining room and washroom with the landlord. The landlord did not have an ownership interest in the property. The tenant vacated the rental unit on April 23, 2015.

The landlord seeks to recover loss of income for the months of May – September inclusive as she was unable to find a new tenant. The owner testified that the landlord advertised the unit for rent on the university website. The tenant agreed that the landlord had advertised the unit.

The tenant testified that he vacated the unit because his parents had divorced. The tenant first claimed that the Residential Tenancy Act does not apply because he was sharing the bathroom and the kitchen with the landlord. He also argued that he should not be held responsible for the landlord's loss of income because he believed someone else had moved into the rental unit after he vacated, because he was not renting a proper bedroom but only had exclusive possession of the living room and because the

landlord apparently had no issue with him vacating early because she didn't ask him for rent for May – September.

### Analysis

Section 4(c) of the Act provides that the Act does not apply to tenancies in which the tenant shares a bathroom and/or kitchen with the *owner* of the unit. While the definition of “Landlord” under the Act includes an owner, there is no definition of “owner” and I therefore presume that I am to apply the usual definition, which is that the owner is the person who holds the title to the rental unit. Had the legislature wished to exclude tenancies in which the tenant shared the kitchen and/or bathroom with the landlord regardless of whether that landlord owned the rental unit, I have no doubt they would have used the defined term. I find that this tenancy falls within the jurisdiction of the Act.

The tenant provided no evidence to corroborate his claim that someone else moved into the rental unit after he vacated and in the absence of that evidence, I accept the owner's testimony and find that the unit remained empty throughout the balance of the fixed term. The fact that the tenant was renting a living room rather than a proper bedroom is irrelevant as the Act does not require that a rental unit be comprised of a designated bedroom.

As for the tenant's argument that the landlord didn't request rent for the balance of the fixed term, I find that the landlord did not have to make this request. The tenant was contractually obligated to pay rent until August 31 and the fact that the landlord filed a claim against him should have put the tenant on notice that she expected him to fulfill his obligation.

While I appreciate that the tenant felt he had to end the tenancy due to difficult family circumstances, this does not excuse him from fulfilling his obligations under the agreement. I find that the tenant breached his obligation under the tenancy agreement, that the landlord suffered a loss as a result and that the landlord acted reasonably to minimize her losses. I therefore find that the landlord is entitled to recover the loss of income from the tenant and I award her \$3,200.00 which represents 4 months of rent at a rate of \$800.00 per month. As the landlord has been successful in her claim, I find she should recover the \$50.00 filing fee paid to bring her application and I award her this sum for a total award of \$3,250.00. I grant the landlord a monetary order under section 67 for this amount. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$3,250.00.

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: November 04, 2015

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Residential Tenancy Branch

