



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR MNSD 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 and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The respondent did not attend this hearing, although I waited until 9:25 a.m. in order to enable the respondent to connect with this teleconference hearing scheduled for 9:00 a.m. The applicant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The applicant testified that on June 29, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the respondent by registered mail. The applicant provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the respondent was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the respondent.

### Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the applicant entitled to an order of possession and monetary order for unpaid rent and utilities? Is the applicant entitled to recover the filing fee for this application from the respondent?

### Background and Evidence

The rental unit is large residential house with a community kitchen and living room. The applicant K.G. leased the house from P.W. and E.W. who in turn had a lease agreement with the owner of the property. K.G. then entered into a lease with the respondent on December 27, 2014. K.G. shared the accommodations with the respondent and 3 other roommates. The agreement between K.G. and the respondent was for the respondent to occupy a bedroom in the basement of the home for \$560.00 per month plus a share of the utilities depending on number of occupants in the rental unit.

K.G. and his roommates were to vacate the rental unit on July 31, 2015 as K.G.'s lease with P.W. and E.W. expired on this date. K.G. and his other roommates vacated on this date. However the respondent did not vacate the rental unit.

After the above lease expired, P.W. and E.W. entered into a new lease agreement to sublease the property to a new tenant "Jennifer". P.W. and E.W. submitted that the respondent may have entered into a new lease agreement with Jennifer as he continued to reside in the rental unit with her. Subsequently Jennifer provided notice and ended the sublease with P.W. and E.W. The respondent continues to occupy the rental unit and has not been paying any rent. P.W. and E.W.'s lease with the property owner has also since expired.

### Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Pursuant to section 2 of the Act, the Act applies to **tenancy agreements**, rental units and other residential property.

A tenancy agreement is defined under section 1 of the Act as follows:

***"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

Landlord is defined under section 1 of the Act as follows:

***"landlord"**, in relation to a rental unit, includes any of the following:*

...

- (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;*

The definition of a tenancy agreement under the Act implies that it is an agreement between a landlord and a tenant. The definition of landlord under the Act specifically excludes a **tenant occupying the rental unit**.

In this case, the agreement in question was not a tenancy agreement between a tenant and a landlord as defined under the Act. Rather, the agreement was between the respondent and another tenant occupying the rental unit. The Act does not cover these types of agreements or living arrangements. Accordingly, I do not have jurisdiction under the Act over this matter.

Pursuant to subsection 62(2) of the Act, I may make any finding of fact or law that is necessary or incidental to the making of decision or order under the Act. While I am unable to issue an order of possession to the applicant, I find that there is no valid tenancy agreement in place which legally permits the respondent to occupy the rental unit.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I find that I do not have jurisdiction over this matter. 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 08, 2016

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Residential Tenancy Branch

