



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPN, MNSD, MNR, FF

### Introduction

This hearing convened as a result of an Applicant's Application for Dispute Resolution wherein the Applicant requested an Order of Possession, a monetary order for unpaid rent, authority to retain the Respondent's security deposit and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter—Relief Sought

The Applicant confirmed the Respondent had vacated the rental unit such that an Order of Possession was not required.

### Issues to be Decided

1. Is the Applicant entitled to monetary compensation from the Respondent for unpaid rent?
2. What should happen with the Respondent's security deposit?

3. Should the Applicant recover the filing fee?

Background Evidence

J.B. testified that he had a tenancy agreement with the owner of the rental unit and that he sublet the unit to the D.P. for a period of four months while he was away. Introduced in evidence was a copy of the original tenancy agreement confirming J.B.'s tenancy was for a fixed term ending April 30, 2016. J.B. testified that he had the permission of the owner to sublease his tenancy for those four months.

A copy of the Residential Sublease Agreement (the "Sublease") was introduced in evidence which confirmed the parties agreed to a four month fixed term tenancy beginning January 1, 2016; monthly rent was payable in the amount of \$1,100.00 per month payable on the first of the month; a security deposit was paid in the amount of \$450.00 and a furniture deposit in the amount of \$450.00 was paid for a total of \$900.00 in deposits. The Sublease indicated that the deposits were to be \$550.00 each for a total of \$1,100.00; despite this, J.B. stated that D.P. was unable to transfer more than \$1,000.00 and as such D.P. only paid \$900.0 in deposits.

J.B. further testified that D.P. gave notice on January 15, 2016 and moved out of the rental unit by the end of January 2016. A copy of the message sent by D.P. to J.B. dated January 15, 2016 wherein D.P. agrees to forego his furniture deposit for breaking the lease.

J.B. confirmed that he was not able to re-rent the rental unit during the fixed term and moved back into the rental at the end of April 2016. He confirmed that he was seeking monetary compensation for the unpaid rent for February, March and April 2016 in the amount of \$3,300.00 in addition to the \$100.00 filing fee.

J.B. also sought authority to retain D.P.'s \$900.00 deposits towards the amounts awarded.

D.P. testified that he gave notice on January 15, 2016 and he offered to help J.B. find another renter. He stated that in response J.B. told him that he wished to handle the advertising and re-renting.

D.P. further testified that he offered that J.B. retain his furniture deposit, which he calculated as \$350.00 based on the \$900.00 payment for the deposits. He stated that the next communication he received from the Applicant on January 31, 2016 suggested that the Applicant's parents would be staying in the rental unit to begin showing it. He

stated that he understood, based on this email that the vacancy was being taken care of and that he did not need to take any steps to assist J.B. in re-renting the rental unit.

D.P. further stated that J.B. did not communicate with him further until April 2016 when he asked for his forwarding address. He submitted that had J.B. informed him that the unit remained vacant, he would have been able to advertise himself, reach out to his network in the community in which the rental unit was located, and otherwise take steps to mitigate the loss.

D.P. further submitted that J.B.'s advertising for April 2016 was only placed on March 31, 2016 such that there would have been no opportunity to actually rent the unit.

J.B. replied as follows. He stated that his parents stayed at the rental unit for one night in order to check on the property and show it to potential renters. He denied that his parents stayed at the rental unit for any significant period of time and stated that they only came a couple more times in order to show the rental unit.

J.B. further stated that he did not want D.P. to help find a replacement renter as he saw this as a conflict of interest as he felt D.P. would just rent to "anyone". J.B. further stated that as the rental unit was filled with his personal property, he felt it was necessary to be involved in finding a new renter as he had to be comfortable with whoever was living in his space. He further stated that the building manager was very strict.

### Analysis

### Jurisdiction

J.B. testified that he had the consent of the Landlord to sublet his tenancy. He failed to provide any evidence, aside from his testimony, that such consent had been provided.

Section 34 of the *Residential Tenancy Act* provides that unless a Landlord consents in writing, a Tenant must not assign a tenancy agreement or sublet a rental unit.

Further, section 47(1)(i) provides that a Landlord may issue a 1 Month Notice to End Tenancy for Cause in the event a Tenant sublets the rental unit without the Landlord's written consent.

Section 1 of the *Residential Tenancy Act* provides 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;

A Tenant may sublet their tenancy provided they have the written consent of the Landlord. In such a case, the Tenant is then authorized to permit occupation of the rental unit as contemplated in section 1 above.

In the case before me, J.B. testified that he had been given authority by the Landlord to permit occupation of the rental unit by others. The *Act* requires such consent to be in writing. J.B. failed to provide evidence of the Landlord's *written consent* and therefore, failed to provide sufficient evidence to show he had authority to sublet his tenancy. Accordingly, I find there was insufficient evidence to show that J.B. was able to confer any rights or obligations on D.P.

*Residential Tenancy Policy Guideline 13* provides that 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. In this case, I am unable to find that all parties, and in particular, the Landlord, agreed to include D.P. as a tenant.

Based on the evidence before me, I am not satisfied that I have jurisdiction under the *Residential Tenancy Act* to hear the dispute between these parties. I find that J.B. is not a Landlord as contemplated by section 1 of the *Residential Tenancy Act*, and I further find insufficient evidence that J.B. had the Landlord's written consent to sublet his tenancy, or confer any rights or obligations onto D.P. as it relates to the rental unit. I therefore decline jurisdiction.

Conclusion

J.B. failed to provide sufficient evidence that he had the written consent of the Landlord to sublet his tenancy. J.B. is therefore not a Landlord as contemplated by section 1 of the *Residential Tenancy Act*. I therefore decline jurisdiction to hear the 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: November 6, 2016

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Residential Tenancy Branch