



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, SS

### Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on September 29, 2016 for a Monetary Order for: damage to the rental unit; for unpaid rent and utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and, to recover the filing fee from the Tenant.

### Preliminary Issues

The Landlord had also applied for an order to serve the documents for this hearing in a manner not prescribed by the Act. This portion of the Landlord's Application was heard and determined by a different Arbitrator on October 19, 2016 through an ex parte hearing. In a decision dated the same date under this same file number, that Arbitrator determined that the Landlord was able to serve the respondents through a third party. That decision should be read in conjunction with this Decision.

The Landlord and two of the Tenants named on the Landlord's Application appeared for the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's Application which disclosed a monetary claim amount of \$3,686.50 consisting of unpaid rent and utilities as well as damages to the rental unit. The parties also confirmed receipt of each other's documentary evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided for this hearing.

The Landlord named three respondents on the Application, two of which appeared for this hearing. However, there was no appearance for the third male party named by the Landlord, who is referred to in this Decision as the male Respondent.

The Landlord testified that this tenancy started on July 1, 2013 for the two Tenants. However, the Tenants had allowed the male Respondent to occupy the rental unit from February 2014 to the end of the tenancy on September 30, 2014. The Landlord confirmed that he made no efforts to add the male Respondent to the signed tenancy agreement he had with the Tenants and that he was aware that the male Respondent was residing at the rental unit. The Landlord also confirmed that the male Respondent did not pay any rent to the Landlord.

The Landlord pointed to the tenancy agreement he had with the Tenants which provides for an increase of \$100.00 for any additional occupant in the rental unit. However, the Landlord confirmed that he had not taken any action or pursued any remedy under the Act to deal with the alleged occupancy of the male Respondent in the rental unit or a breach of the tenancy agreement.

The Landlord relied on mail that he received in the name of the male Respondent to the rental unit address after the tenancy had finished on September 2014 as evidence that the male Respondent was residing in the rental unit as an occupant.

The Tenants denied the male Respondent resided at the rental unit and submitted that the male Respondent came to the rental unit as a guest. The Tenants testified that the male Respondent was residing in a bachelor suite in a different location and towards the end of their tenancy, the male Respondent was having problems getting mail to his bachelor suite so he was using the rental unit address as a way to get his mail. The Tenants denied that the male Respondent is party to this tenancy agreement and therefore should not be named on the Application.

In consideration of the parties' evidence with respect to whether the male Respondent is party to the tenancy agreement, I refer to Policy Guideline 19 on Assignment and Sublets. This states that occupants or roommates have no rights or responsibilities under the Act.

In this case, the Landlord has failed to satisfy me that the male Respondent was a tenant in this dispute. The male Respondent was not added to the tenancy agreement as a tenant and the Landlord took no action or remedy to deal with this matter when it came to his attention in February 2014. The Landlord also failed to satisfy me that the male Respondent paid rent directly to him or performed any duty or responsibility that

was required of the Tenants. Furthermore, the Landlord has failed to provide sufficient evidence that the male Respondent occupied the rental unit in a capacity exceeding that of a guest. Therefore, I amend the Landlord's Application to remove the male Respondent as a tenant in this dispute pursuant to my authority under Section 64(3) (c) of the Act. As a result, this Decision and any order made against the Tenants will only be in their names.

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

After the parties had finished providing their evidence relating to the Landlord's monetary claim, I offered the parties an opportunity to settle the dispute by mutual agreement. The parties were informed that this was a voluntary process and there was no requirement or pressure on the parties to agree to any agreement.

After giving the parties an opportunity to have a discussion between them, the parties committed to a settlement discussion with my assistance. As a result, I assisted the parties in discussing the issues between them. The parties then turned their minds to compromise, and were able to achieve a resolution of the dispute as follows.

#### Settlement Agreement

1. The Tenants agreed to allow the Landlord to keep their security deposit of \$375.00.
2. In addition, the Tenants agreed to pay the Landlord \$1,000.00 in monetary compensation in full and final satisfaction of the Application.
3. The Landlord agreed the Tenants will pay this debt in \$75.00 monthly installments until the debt is fully satisfied.
4. The parties agreed the first payment will be payable on or before May 31, 2017 and each subsequent payment must be made on or before the last day of each month thereafter.
5. The Tenants are responsible for ensuring the Landlord receives the payment and must retain documentary evidence of the payments made.
6. The Landlord is issued with a Monetary Order in the amount of \$1,000.00, which can be enforced at any time if the payment(s) are not made by each deadline.

This agreement and order is final and binding on the parties and may be enforced in the Small Claims Division of the Provincial court as an order of that court. The Tenants may also be liable for any enforcement costs incurred by the Landlord.

Both parties are cautioned to keep detailed written records of any transactions that are made with regards to the above terms of the agreement.

The parties confirmed their voluntary agreement to resolution in this manner both during and at the end of the hearing. This file is now closed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 25, 2017

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Residential Tenancy Branch