



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND MNSD MNDC FF OPB

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- an Order of Possession pursuant to section 55;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

While the tenant AG and her agent attended the hearing by way of conference call, the landlords did not. I waited until 2:10 p.m. to enable the landlords to participate in this scheduled hearing for 2:00 p.m. The tenant and her agent were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

Accordingly, **in the absence of any submissions in this hearing from the landlords I order the landlords' application dismissed with liberty to reapply.** I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

The tenant AG provided sworn, undisputed testimony that she had served the landlords with her application for dispute resolution hearing package ("Application") and evidence by way of registered mail on January 26, 2018. The tenant included the tracking information in her evidence package. Accordingly, I find that the tenant had complied with section 89(c) of the *Act*. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlords were deemed served with the Application and evidence.

### **Issues(s) to be Decided**

Do I have jurisdiction under the *Act* to consider the tenant AG's application for dispute resolution?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The respondents in the tenant's application for dispute resolution signed a tenancy agreement with their landlord for a fixed term tenancy that began on July 1, 2017. The tenant applicant in this dispute rented a room from the two respondents. The tenant submitted a copy of the written tenancy agreement, which is she not named in as a tenant. The two respondents are the named tenants in the tenancy agreement, and pay monthly rent in the amount of \$2,650.00 to their landlords. The two respondents paid a security deposit in the amount of \$1,325.00 and a pet damage deposit in the amount of \$1,325.00 to their landlords.

The tenant applicant agreed to rent a room in the home from the two respondents for \$883.00 per month, and paid a security deposit in the amount of \$441.50 and a pet damage deposit in the amount of \$441.50.

The tenant applicant moved out on September 1, 2017, and despite her written requests to the respondents she had only received a portion of her deposits back. The two respondents still retain \$220.00 of her deposit, which she is requesting a return of.

### **Analysis**

RTB Policy Guideline #19 clearly provides the definition of a "sublet" versus a "roommate" situation, which states:

*“Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate...”*

By the above definition the tenant in this dispute cannot be considered a “sublet” or a “tenant”, but a roommate or occupant, as the two tenants named in the tenancy agreement still reside there. Based on the evidence, I do not find that the relationship between the parties is a tenancy.

I am unable to consider the application for the return of AG’s security deposit because I find that there is no tenancy agreement between the parties. AG is an occupant or roommate, and not a tenant under the definition of section 1 of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupant as a tenant. As I am not satisfied that the landlords agreed to include AG as a tenant in the tenancy agreement, the *Act* does not apply to their relationship. On this basis, I cannot consider AG’s application for the return of her deposit as I have no jurisdiction in this matter.

### **Conclusion**

The landlords’ application is dismissed with leave to reapply.

I find that AG is not considered a tenant, but an occupant or roommate in this matter. Accordingly, I decline to hear this matter as I have no jurisdiction to consider the application.

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: April 30 2018

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Residential Tenancy Branch