



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL, MNDL, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 9, 2018 (the “Application”). The Landlord sought compensation for damage to the unit, compensation for monetary loss or other money owed and reimbursement for the filing fee.

H.K., the daughter of the Landlord, appeared at the hearing for the Landlord. She advised she filed the Application with the Landlord so had all necessary information for the hearing. Respondent K.K. appeared at the hearing for all Respondents. I explained the hearing process to the parties and neither had questions when asked. Both parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. K.K. confirmed she received the hearing package and evidence from the Landlord and raised no issues in this regard. H.K. confirmed she received the Respondents’ evidence and, after some discussion, it was confirmed she received the same evidence as was submitted.

During the hearing, it came to my attention that Respondent B.K. was not aware of this hearing and had not received the hearing package or evidence. I obtained details regarding this from H.K. and heard from K.K. on this issue. I will not detail this evidence here given my decision below.

### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?

### Background and Evidence

A written tenancy agreement had been submitted as evidence. Both parties agreed it is accurate. It was between the Landlord and the Named Tenant, as listed on the front page of this decision, regarding the rental unit. The tenancy started September 1, 2016 and was for a fixed term of one year ending August 31, 2017. Rent was \$1,400.00 per month. The agreement is signed by the Landlord and the Named Tenant. Both parties agreed the Named Tenant and Respondents vacated the unit April 30, 2017.

The agreement includes an addendum. The addendum includes a term stating “[the] tenant acknowledges and agrees that there are only THREE people residing...in the premises; ANY ADDITIONAL PERSONS must be approved by the landlord with an ADDITIONAL CHARGE of \$1000.00 per person each month”. The three Respondents are listed as the three people residing in the premises. The addendum is signed by the Landlord and the Named Tenant.

I asked the parties for their position on whether the Respondents were tenants under this tenancy agreement or merely occupants. H.K. testified as follows. Respondent S.K. wanted to move into the rental unit. She was not of legal age. Respondent B.K., her grandmother, was going to live in the unit with her. B.K. could not sign the tenancy agreement because she was not yet in the country so the Named Tenant, the mother of K.K. and S.K., signed the agreement. It was then decided that K.K. would also live in the unit. The Landlord agreed to have the three Respondents live in the unit.

I asked why the Respondents were not listed as tenants in the agreement but listed in the addendum instead. H.K. said this was because the Named Tenant came to sign the agreement. She said the Landlord thought the Named Tenant would be living in the unit and then found out the day the agreement was signed that B.K. would be living in the unit. She said she did not think the Landlord understood the difference between a tenant and occupant. She testified the Named Tenant was responsible for paying rent. She said she named the Respondents in the Application because they occupied the unit and she did not know the difference between a tenant and occupant.

K.K. testified S.K. was 16 years old when the tenancy agreement was signed. She agreed with H.K. regarding the signing of the tenancy agreement. She also testified B.K. was included in the agreement in case the Named Tenant could not be there and that B.K. did not yet have a permit to be in Canada. She did not know why the Respondents were listed in the addendum rather than as tenants in the agreement. She testified that all communications occurred between the Landlord and the Named

Tenant. K.K. took the position that the Respondents were just occupants. She said everything was the responsibility of the Named Tenant and not the Respondents. She said the Named Tenant was responsible for paying rent.

I asked each party for their position on whether I should amend the Application to include the Named Tenant as a Respondent. H.K. said the Named Tenant should be included as a Respondent because she was fully responsible for utilities and she should pay the outstanding utilities. She also said K.K. should be included as a Respondent because she was of legal age when the agreement was signed.

K.K. said the Named Tenant was aware of this hearing. She said the hearing package and evidence was mailed to the Named Tenant. She testified that the Named Tenant has seen the Application and evidence with K.K. but did not understand why the Application was under the Respondents' names instead of her name. K.K. said she would leave it to my discretion as to whether I amended the Application to include the Named Tenant.

A Condition Inspection Report was submitted as evidence. It only lists the Named Tenant as a tenant.

A written letter ending the tenancy was submitted as evidence. It only names the Named Tenant as the tenant and is signed by the Landlord and Named Tenant.

Email correspondence regarding the rental unit was submitted as evidence. It is between the Landlord and the Named Tenant. Some of the emails address the issue of the history surrounding signing the tenancy agreement which I will not detail here given neither party pointed to this in their submissions on the issue.

K.K. submitted documents from a previous arbitration. The Named Tenant is the only applicant listed in these documents.

### Analysis

Policy Guideline 13 addresses the rights and responsibilities of co-tenants. It defines tenants and co-tenants as follows (page 1):

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two

or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

The Policy Guidelines defines occupants as follows (page 2):

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.

Based on the testimony of both parties, I find the Respondents were not tenants under the tenancy agreement but were simply occupants. I find this based on the following. The written agreement only names the Named Tenant as a tenant. The Respondents are only listed in the addendum as being permitted to reside in the unit. The agreement is only signed by the Landlord and Named Tenant, not the Respondents. Both parties agreed it was the Named Tenant who was responsible for paying rent. I accept the testimony of K.K. that all communications about the rental unit occurred between the Landlord and Named Tenant. I did not understand H.K. to dispute this. This is supported by the evidence submitted. Neither party took the position that the Respondents were tenants rather than occupants. K.K. submitted the Respondents were simply occupants.

I do not find it appropriate to amend the Application to include the Named Tenant as a Respondent. I accept the testimony of K.K. that the Named Tenant was aware of the hearing and had seen the Application and evidence. However, the Named Tenant would have had no way of knowing that the Landlord was seeking monetary compensation from her as she was not listed on the Application as a Respondent. In my view, it would be unfair to amend the Application to include the Named Tenant when she had no notice that the Landlord was seeking monetary compensation from her and when she did not attend the hearing to address the amendment or claim.

Although I told the parties at the hearing I would adjourn to hear the remainder of the Landlord's claim, doing so has become unnecessary given my decision above. Given the Respondents were occupants, they had no rights or obligations under the tenancy agreement and therefore the Landlord cannot obtain monetary compensation from them. I have declined to amend the Application to include the Named Tenant who did have rights and obligations under the agreement. In these circumstances, the

Application is dismissed with leave to re-apply against the Named Tenant. This does not extend any time limits set out in the *Residential Tenancy Act* (the “*Act*”).

Given the Landlord was not successful in this application, I decline to award reimbursement for the filing fee.

I told the parties at the hearing that they would receive an interim decision and new Notice of Hearing for the adjourned hearing date. Given my decision above, which is a final decision, the parties will not receive either an interim decision or new Notice of Hearing. It is open to the Landlord to re-apply for the monetary compensation requested in the Application with the Named Tenant as the Respondent.

### Conclusion

The Application is dismissed with leave to re-apply against the Named Tenant. This does not extend any time limits set out in the *Act*.

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: July 03, 2018

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Residential Tenancy Branch