



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Applicant under the *Residential Tenancy Act* (the “Act”), seeking:

- Return of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant and the Respondent K.W., both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application and Notice of Hearing. Although K.W. confirmed service and receipt of the Application, Amendment, Notice of Hearing and the documentary evidence before me for consideration, the other Respondent, H.W. did not appear and does not reside with K.W. As a result, I confirmed service of these documents on the Respondent H.W. as explained below.

The Applicant testified that the Application, Amendment, Notice of Hearing and the documentary evidence before me for consideration were sent to the Landlord by registered mail at the address at which they reside on December 18, 2018, and provided me with the registered mail tracking number. The Canada Post website confirms that the registered mail was sent as described above and signed for on December 19, 2018. As a result, I find that the Respondent H.W. was served with a copy of the Application, Amendment, Notice of Hearing and the documentary evidence before me for consideration in accordance with the *Act* and the Rules of Procedure on December 19, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Applicant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided by them in their Application. At the request of the Respondent K.W., copies of the decision will be emailed to them at the email address provided by them in the hearing. As the Respondent H.W. did not attend, copies of the decision will be mailed to them at the mailing address listed for them in the Application.

### Preliminary Matters

#### **Preliminary Matter #1**

The Applicant filed an Amendment to an Application for Dispute Resolution (the "Amendment") with the Residential Tenancy Branch (the "Branch") on December 18, 2018, seeking to update the Respondent K.W.'s address for service and amend their claim to include recovery of double their initial security deposit amount.

As stated above, K.W. confirmed receipt of the Amendment in the hearing and I am satisfied that the Respondent H.W. was served with the Amendment in accordance with the *Act* on December 19, 2018. I therefore amended the Application in accordance with the *Act* and the Rules of Procedure.

#### **Preliminary Matter #2**

At the outset of the hearing I determined that neither of the Respondents are owners of the dispute address and that at the time of the tenancy between themselves and the Applicant, were in fact tenants of that property under a separate tenancy agreement with the landlord. As a result, I find that I must determine whether I have the jurisdiction to hear this matter under the *Act* prior to considering the merits of the Application or the Amendment. Section 1 of the *Act* defines a landlord 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;

The parties agreed that the Applicant rented a self-contained basement suite from the Respondents on a month to month basis starting September 1, 2017, at a monthly rate of \$1,000.00 per month and that the tenancy ended on October 1, 2018. The Respondent K.W. stated that neither of the Respondents own the single-family home in which the basement suite rented by the Applicant's is located, and that the entire single family home (including the basement suite) was in fact rented to them (the Respondents) by the landlord on September 1, 2017, under a separate one year fixed-term tenancy agreement. Although K.W. stated that they had the landlord's permission to rent out the self-contained basement suite and that the suite was rented to the Applicant by them on behalf of the landlord, I am not satisfied that this is the case. There is no documentary evidence before me in support of this testimony and K.W. acknowledged when asked that the purpose of renting out the basement suite to the Applicant was to help the Respondents pay their own rent, which was due in full to the landlord for the entire property.

Based on the above, I find that there is no reliable evidence upon which I could reasonably conclude that the Respondents were acting as agents for the landlord under the *Act* in renting out the basement suite to the Applicant and were in fact, renting it out to the Applicant for their own benefit, not on behalf of the landlord.

Having made this finding, I will now turn my mind to whether the tenancy agreement between the Applicant and the Respondents meets the definition of a sublease agreement under the *Act*. Section 1 of the *Act* defines a sublease agreement as follows:

**"sublease agreement"** means a tenancy agreement

- (a) under which
  - (i) the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and

- (ii)the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and
- (b)that specifies the date on which the tenancy under the sublease agreement ends;

I acknowledge that a portion of the single family home rented to the Respondents by the landlord was vacated by the Respondents and possession of this portion was subsequently transferred to the Applicant. However, K.W. testified that their tenancy agreement with the landlord was for a one year fixed term and the parties agreed that the tenancy agreement reached between them for rental of the basement suite was on a month-to-month basis, not a fixed term. As a result, I find that the basement suite was not rented to the Applicant by the Respondents for a period shorter than the term of the Respondents fixed term tenancy agreement with the landlord. Further to this, there is no evidence before me to suggest that the tenancy agreement reached between the parties required the Applicant to vacate the basement suite on a particular date, as it was a periodic tenancy, or that any such date, should it have been specified, was earlier than the date upon which the Respondents' fixed-term tenancy with the landlord was set to end. As a result, I find that the tenancy agreement reached between the parties was not a sublease agreement as defined under section 1 of the *Act*.

Based on the above, I find that the any tenancy agreement to have existed between the Applicant and the Respondents does not qualify as a sublease agreement under section 1 of the *Act*. Further to this, I find that the Respondents do not meet the definition of landlords under section 1 of the *Act*.

Policy Guideline 27 states that the Legislation does not confer upon the Branch the authority to hear all disputes regarding every type of relationship between two or more parties. The Branch only has the jurisdiction conferred by the Legislation over landlords, tenants and to the extent covered by the Act and regulation, strata corporations. Further to this, section 59 of the *Act* states that the director may refuse to accept an application for dispute resolution if, in the opinion of the director, the application does not disclose a dispute that may be determined under the *Act*. As stated above, I find that there is no sublease agreement between the parties as defined under section 1 of the *Act* and that the Respondents do not meet the definition of landlords under the *Act*. As a result, I am satisfied that this is not a landlord and tenant dispute over which I have jurisdiction under the *Act* and I refuse to hear this matter for lack of jurisdiction. I encourage the parties to seek independent legal advice in relation to 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: January 25, 2019

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Residential Tenancy Branch