



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT, MNSD

### Introduction and Conclusion

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on May 30, 2019 wherein the Applicant sought monetary compensation in the amount of \$1,900.00, return of the security and pet damage deposit paid and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on July 2, 2019. The line was monitored for the duration of the hearing and the only participant who called in was the Respondent. The Applicant did not attend this hearing, although I left the teleconference hearing connection open until 2:25. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Respondent and I were the only ones who had called into this teleconference.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

#### **Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

#### **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.

Pursuant to the above, I continued the hearing in the absence of the Applicant.

The Respondent stated that she is not a landlord, but rather is a tenant and rented a room to the Applicant as a roommate.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge; rather, Arbitrators must only assume jurisdiction over tenancy disputes which are governed by the *Residential Tenancy Act*.

A Tenant under a tenancy agreement may assign or sublet their tenancy. However, an assignment or sublet assumes the tenant is no longer in occupation of the rental unit. For greater clarity, I reproduce portions of the *Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet*

“ ...

Assignment is the act of permanently transferring a tenant’s rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

... ”

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant.”

In the case before me, the Respondent, B.A. continues to reside in the rental unit. She confirmed that she is the only tenant on her tenancy agreement and further confirmed that she was not acting as an agent of her Landlord. She further confirmed that she rents a room to the Respondent. Accordingly, the living arrangement is more accurately described as roommate situation whereby the Applicant, J.B., is an occupant of the rental unit.

*Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet* provides the following guidance with respect to such situations and reads as follows:

**“Occupants/roommates**

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, with no rights or responsibilities under the *Residential Tenancy Act*.”

In consideration of the above, I find the Applicant, J.B., is an occupant/roommate and as such the *Residential Tenancy Act* does not apply to this dispute. Accordingly, I decline jurisdiction.

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: July 02, 2019

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Residential Tenancy Branch