



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

On April 15, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep a security deposit.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties participated in a previous hearing in March 2019, with respect to the same tenancy, and the Tenants were awarded the return of the double the security deposit. Since the issue surrounding the security deposit was already heard and decided, the Landlord’s claim to keep the security deposit is dismissed.

### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage or repair costs?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 2, 2017, as a six month fixed term tenancy to continue until March 31, 2018. Rent in the amount of \$1,700.00 was to be paid to the Landlord by the first day of each month. The Landlord provided a copy of the tenancy agreement.

The Landlord is seeking compensation as follows:

Loss of Rent for February 2018	\$1,700.00
Cleaning Costs	\$75.00
Carpet Cleaning	\$90.00
Carpet Replacement	\$548.00
Tile Floor replacement breezeway	\$910.98
Tile Floor replacement Livingroom/dining	\$4,580.00
Blinds	\$87.00
Door Repair	\$75.00
Deodorizing Spray	\$275.00
Lockset	\$145.00

Approximately thirty minutes into the hearing, the Landlord/ Applicant identified that he is renting the rental unit from the owner of the property. He testified that he is the Tenant of the property owner. The Landlord / Applicant testified that he is not acting as an agent for the owner with respect to the tenancy agreement with the Tenant / Respondent. The Landlord / Applicant testified that the tenancy agreement is only between him and the Tenant /Respondent.

Based on the Landlord's / Applicants disclosure that he is a Tenant of the owner, I have considered whether the Applicant is a Landlord under the Act.

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;*

Residential Tenancy Policy Guideline # 13 Rights and Responsibilities of Co-tenants is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides an explanation of an Occupant.

### Occupants

*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.*

Residential Tenancy Policy Guideline #19 Assignment and Sublet is intended to help the parties to an application understand issues that are likely to be relevant and what information or evidence is likely to assist them in supporting their position. The Guideline provides an explanation of Occupants/Roommates. The Guideline provides:

*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. If there is no landlord/tenant relationship, the Act does not apply.*

After considering the policy guidelines and the testimony of the parties, I find that the Applicant / Landlord does not meet the definition of a Landlord because he is not the owner of the rental unit, or the Landlords agent who on behalf of the Landlord permits occupation of the rental unit under a tenancy agreement. According to the definition, a Landlord must be a person other than a Tenant occupying the rental unit.

In addition, the Tenant/ Respondent is not a Tenant with full rights under the Act because she did not enter into a tenancy agreement with the owner of the rental property. She is an occupant/ roommate of the Tenant with no rights or responsibilities under the Act.

I find that the Act does not apply to the living arrangement and therefore I have no jurisdiction to hear the dispute. The Application for Dispute Resolution is dismissed without leave to reapply.

The Landlord questioned why the previous hearing was allowed to proceed. The parties were informed that I have no way of knowing whether or not the Arbitrator was provided with the facts surrounding the tenancy relationship between the owner and Tenant at the previous hearing. I have no authority to change the earlier Decision.

### Conclusion

The Landlord / Applicant is actually a Tenant under a tenancy agreement with the owner of the rental property. The Applicant was not acting as the owners' agent. The Tenant/ Respondent is an occupant/ roommate because she is not under a tenancy agreement with the owner of the property.

I find that the Act does not apply to the living arrangement and therefore I have no jurisdiction to hear the dispute. The Application for Dispute Resolution is dismissed without leave to reapply.

The application is dismissed in its entirety

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 16, 2019

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Residential Tenancy Branch