



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$391.50 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Applicant, his lawyer, K.C. ("Counsel"), the Landlord, M.M., and her advocate, J.W. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Landlord, D.W. ("Witness"), was also present and provided affirmed testimony. During the hearing the Applicant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the start of the first hearing, the Applicant's Counsel advised that the Applicant was ill, and Counsel had been retained just that day; therefore, Counsel requested an

adjournment, so that the Applicant could attend and present the merits of his case. The Landlord did not oppose the adjournment; therefore, the hearing was adjourned and reconvened on February 3, 2020. This Decision addresses the testimony and submissions presented at the reconvened hearing.

#### Issue(s) to be Decided

- Is the Applicant entitled to a monetary order, and if so, in what amount?

#### Background and Evidence

The Witness testified that he moved into the rental unit on December 30, 2014, with one of his sons who was attending school. The Witness said that when his son finished school and moved out, the Applicant moved in on January 25, 2018. The Parties disagreed as to whether the Applicant was a “tenant” of the Landlord, M.M., and therefore, whether this was the right forum for his Application.

The Witness said that the Applicant paid him \$600.00, and later \$700.00 to live in a room in the residential property owned by the Landlord, M.M. The Parties agreed that the Applicant did not pay a security deposit for this arrangement, and that the Applicant and the Witness shared a kitchen and bathroom. The Witness said he had an agreement with the Landlord, M.M., to rent the house and another agreement with the Applicant to rent a room in the house. The Witness did not submit a copy of either agreement to the RTB nor did he serve it on the Parties.

The Applicant submitted a form from the Ministry of Social Development and Poverty Reduction entitled: “Shelter Information”. Near the top of this form it states:

This form is NOT a tenancy agreement. This form should be used ONLY if a tenancy agreement is NOT available. This form is for ministry information only.

[emphasis in original]

This form includes information such as the Applicant’s name, date of birth, address (the residential property), amount of rent paid per month, whether the Applicant shares a kitchen or bathroom with the owner (“yes” checked), and the name and street address of the Landlords. In the latter section, the Landlord, M.M., is identified as the registered owner of the rental unit, and the Witness is identified as the “Landlord or Property Manager/Agent (if different)”.

The Landlord said she did not remember if the Witness asked permission for the Applicant to live in the residential property. She said she was away and that she “let it be. I could have opposed it, but I felt compassion for [the Applicant]. . . I didn’t interfere.”

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Policy Guideline #19, “Assignment and Sublet”, describes the situation that is in the evidence before me:

#### **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*.

There is no evidence before me that the Witness was acting as an agent on behalf of the Landlord.

Based on the evidence and authorities overall, I find that the Act does not apply to the Applicant’s living situation described in the hearing. Accordingly, I find I do not have the jurisdiction to decide this matter.

Conclusion

I decline to rule on this matter, as I have no jurisdiction to consider this Application. The Parties are referred to the Civil Resolution Tribunal for assistance in resolving their dispute.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 05, 2020

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Residential Tenancy Branch