



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on October 29, 2020. The Tenant applied for the return of a security deposit, pursuant to the *Residential Tenancy Act* (the *Act*).

The person named as the Tenant on this application attended the hearing and provided testimony. An advocate was also present to assist the Tenant. The person named as the "Landlord" on this application also appeared at the hearing. Both parties confirmed receipt of each other's evidence.

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

### Preliminary and Procedural Matters - Jurisdiction

The Landlord argued that he is not a "Landlord" and that the Act does not apply to this living arrangement. More specifically, the Landlord stated that he is a Tenant himself, and rents out the whole rental unit (a 2-bedroom apartment); he then rents out individual rooms to sub-tenants. The Landlord stated that the sub-Tenant (applicant on this application) never had exclusive rights or use of the house. The Landlord argued that the Tenant on this application is a roommate, as he only rents a room in this shared living arrangement. My analysis of the Landlord/roommate issue raised will follow below. However, in this decision, I will refer to the parties, as they are named on the application.

The Landlord explained that he has occupied and lived in one of the bedrooms in this 2-bedroom rental unit for many years, meanwhile he has rented out the second bedroom to a variety of roommates who shared the space with him. He claims this worked well for many years, without issue. The Landlord stated that sometime earlier this year, he chose to rent another house in a different municipality. Once he rented this second house, he proceeded to find roommates for that house and spend most nights there, when he was not away travelling or working.

Once this second house was rented, the Landlord appears to have stopped sleeping and living in his usual bedroom (in this rental unit within the 2 bedroom apartment) where he has lived for years, and instead he rented that room to a couple of people. These individuals who rented out his bedroom, were already living there at the time the Tenant on this application moved into the other bedroom in early April, and they continued to occupy that room up until August 19, 2019. Alongside this, the Landlord rented the second bedroom, pursuant to the "sublease agreement", to the Tenant on this application. The Tenant moved into the second bedroom in early April 2019. This was a fixed term "sublease agreement" which expired at the end of October 2019, which is when the Tenant moved away and ended his tenancy.

When the Tenant moved in, he paid a security deposit in the amount of \$725.00, which the Landlord acknowledges that he still holds. This is not in dispute. The Tenant stated that at the time he signed the rental agreement with the Landlord, the Landlord was not actually living in the rental unit, as he was living at the other house. The Tenant reiterated the fact that two other people were renting out one bedroom in the 2 bedroom suite for the majority of time he was living there. The Tenant stated that there was no indication that the Landlord was either living there, or using the space in any residential manner at the time he entered into the sublease agreement and moved in (and paid his deposit).

The Landlord stated that he continued to come and go in the 2 bedroom unit throughout the entire time the Tenant was living there. The Landlord stated that, although he did not have an actual bedroom to use, he would sometimes sleep on the couch, or stop in to use the washroom when he was in the area. The Landlord argues that, since he continued to use parts of the 2 bedroom unit off and on while the Tenant lived there, that this means that the Tenant was only an occupant/roommate, rather than an actual Tenant under the Act. The Landlord stated that between April and August 2019, he would stay on the couch a few nights a month. The Landlord stated he could have brought witnesses with him to the hearing to corroborate that he in fact stayed on the couch several nights, and used some of the suite, but he did not want to inconvenience

those people. The Landlord also stated he had evidence to support that he used the common areas of the rental unit a few times a month, but he did not provide this evidence for the hearing. Ultimately, the Landlord did not provide any evidence to corroborate that he used the space for a consistent residential purpose while this tenancy existed.

The Tenant was adamant that he never once saw the Landlord sleep on the couch, and he would only see the Landlord enter the suite around once a month to fix or check on things, much the way a Landlord would. The Tenant stated that the Landlord never actually used the rental unit in the manner he claims, and is only trying to argue that he was a roommate to circumvent the Act and avoid the responsibilities of being a Landlord.

I have included some relevant excerpts from the Policy Guidelines and the Act as follows:

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;*

Residential Tenancy Policy Guideline # 13 provides an explanation of the difference between a Tenant, and Occupants.

### *Tenant*

*A Tenant is the person who signed the tenancy agreement. 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 and have equal rights under the tenancy agreement.*

### 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 provides an explanation of Subletting and Occupants/Roommates.

### Subletting

*A Tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the Landlord.*

*When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant. There is no contractual relationship between the original landlord and the sub-tenant.*

### 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. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.*

I have considered the testimony and evidence of both parties. The Landlord has asserted that he maintained his status as a roommate, in the 2-bedroom unit, despite renting both bedrooms out. The Landlord has asserted that he entered the unit to occasionally sleep on the couch, use the washroom, and to leave his dog for short periods of time. I note the Tenant stated he never saw this happen, and he never saw the Landlord come over more than once a month, and never for any residential purpose.

I acknowledge that the parties do not dispute that after mid-August, the two individuals renting out the Landlord's old bedroom vacated, and the Landlord began coming over more frequently, eventually moving back in around the end of September 2019. However, my focus is on the nature of the relationship between the Landlord, the Tenant, and the rental unit at the time the agreement was entered into, and the months following that. My analysis will not focus on the short period of time where the Landlord moved back in and lived alongside the Tenant at the end of the tenancy, as this was not the majority of the time, nor was it representative of the relationship at the time the agreement/tenancy was entered into.

I find the Landlord has not provided any corroborative evidence to support his argument that he continued to use the 2-bedroom rental unit as he asserts he did, while both bedrooms were rented out to other people. The Landlord spoke about evidence he could have provided to support that he slept over, used the washroom etc. throughout the time the Tenant rented out one of the bedrooms. However, none of this evidence was provided, and no explanation was provided as to why he couldn't have provided some supportive evidence with a reasonable amount of preparation, especially given all of this information likely would have been available well in advance of the hearing. I find the Landlord has failed to sufficiently support that he continued to occupy the 2 bedroom unit, in a residential capacity, at the time he entered into the rental agreement with the Tenant. It appears he ceased to occupy the premises in any meaningful way after renting both bedrooms out to other parties, one of which was the Tenant on this application. I do not find the fact that he left some furniture and a few personal items behind while he rented out both rooms is sufficient to establish his status as a roommate/occupant.

With no corroborative evidence supporting the Landlord's occupancy of any part of the 2 bedroom unit, in and around April 2019, I find the Landlord was not an occupant or roommate of the Tenant at the time the agreement was entered into, nor was he for the majority of the 6-7 month term. I find the Landlord meets the definition of a "landlord" under section 1(c) of the Act. I find there is sufficient evidence of a Landlord/Tenant relationship, and I accept jurisdiction on this matter. Below is my analysis of the issues the Tenant has applied for.

### Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

### Background and Evidence

The parties confirmed that the Tenant paid a security deposit of \$725.00 and that the Landlord still holds this amount. The rental agreement provided into evidence shows that the Tenant rented a room from the Landlord starting April 1, 2019, for a fixed term until October 31, 2019. Although the Tenant confirmed he had to move rooms for the last couple weeks of the tenancy in October 2019, he was still paying rent and renting a room from the Landlord until on or around October 31, 2019.

There is no evidence that any move-in or move-out inspection was done or that any condition inspection report was completed. The Tenant stated that he tried several times to provide his forwarding address via email and text message after he moved out. The Landlord denied receiving any of these emails or text messages. Finally, after months of unsuccessfully attempting to get his deposit back, the Tenant provided a written letter to the Landlord, which was hand delivered to the Landlord's residence on January 31, 2020. The Tenant provided a copy of an email he received from the Landlord on January 31, 2020, where the Landlord acknowledges receipt of this letter, and takes exception to the request. In the hearing, the Landlord did not refute getting this letter, containing the Tenant's forwarding address, but stated that there were several reasons and issues with the Tenant which made it reasonable for him to retain the deposit.

The Landlord confirmed that he did not file any application against the deposit, nor did he return any of the deposit. The Tenant is now seeking double the security deposit pursuant to section 38 of the Act.

### Analysis

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

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I note the Tenant had a fixed term agreement until the end of October 2019. Although the Tenant moved rooms around October 3, 2019, I find the end of the tenancy was October 31, 2019, the last day of the fixed term agreement, and the day the Tenant vacated. I note the Landlord denied getting the emails and text messages from the Tenant with his forwarding address in writing. However, I note the Tenant dropped a letter off at the Landlord's residence on January 31, 2020, which contained his forwarding address. Based on the email provided into evidence, which the Landlord sent the Tenant on January 31, 2020, I find this was the day he received the Tenant's forwarding address in writing, as he specifically acknowledged getting the letter left by the Tenant that same day.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from receipt of the forwarding address in writing (until February 15, 2020) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and I find the Landlord breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenant is entitled to recover double the amount of the security deposit (\$725.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$1,550.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenant a monetary order in the amount of **\$1,550.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: November 3, 2020

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Residential Tenancy Branch