



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, MNDCL, FFL

### Introduction

On June 7, 2022, the Applicant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Applicant attended the hearing, with V.R. attending as her Tenant. The Respondent attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Applicant advised that she served the Respondent with the Notice of Hearing and evidence package by email on or around June 21, 2022. The Respondent confirmed that she received the Notice of Hearing package; however, she did not receive any evidence from the Applicant. When the Applicant was questioned about service of her evidence, it was apparent that she was uncertain if it was served. Given this uncertainty, and given that the Applicant only submitted a screenshot of proof of the Notice of Hearing package being served, I find it more likely than not, on a balance of probabilities, that the Applicant did not serve her evidence to the Respondent. As such, while I am satisfied that the Respondent was sufficiently served with the Notice of Hearing package, I am not satisfied that she was served with the Applicant’s evidence. Consequently, this evidence has been excluded and will not be considered when rendering this Decision.

The Respondent advised that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Applicant entitled to a Monetary Order for compensation?
- Is the Applicant entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Applicant and V.R. agreed that V.R. and his co-tenant (M.G.) rented the unit from the Applicant on September 1, 2021, that the rent was established at an amount of \$1,600.00 per month, and that it was due on the first day of each month. As well, a security deposit of \$800.00 was also paid. A copy of the signed tenancy agreement between the Applicant, V.R., and M.G. was not submitted as documentary evidence for consideration.

Furthermore, all three parties in attendance agreed that V.R. and M.G. were given permission to sublet the rental unit to the Respondent, and that the Respondent was their sub-tenant. Moreover, the Respondent acknowledged that as the sub-tenant, she paid her rent of \$800.00 per month directly to M.G., who was one of the co-tenants.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to this situation, I find it important to note the following from Policy Guideline 13 regarding Rights and Responsibilities of Co-tenants:

There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means

that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Moreover, Policy Guideline # 19 regarding Assignment and Sublet outlines a sublet in the following manner:

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). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. 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. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

In addition, this policy guideline further states the following:

The sub-tenant typically pays rent to the original tenant; but even if he or she fails to do so, the original tenant's responsibility to pay rent to the landlord is unaffected and the original tenant can be evicted if rent is not paid. Again, it should be noted that there is no contractual relationship between the original landlord and the sub-tenant. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.

In my view, after hearing testimony from all parties, the consistent and undisputed evidence is that the Applicant entered into a tenancy with V.R. and M.G., and that she then permitted V.R. to sublet a portion of the rental unit to the Respondent. Given that all parties agreed that this was the case, and that the Respondent paid her rent to M.G., there is no doubt that a Landlord/Tenant relationship, as contemplated under Section 1 of the *Act*, has not been established between the Applicant and the Respondent. As such, the Applicant has named the wrong party in her Application. Therefore, I have no jurisdiction to render a Decision in this matter.

Moreover, the Applicant's recourse for any breaches of the *Act* would be against her Tenants, V.R. and M.G. In turn, V.R. or M.G.'s recourse for any breaches of the *Act* would be against their Tenant, the Respondent, as a Landlord/Tenant relationship would have been established between those parties.

Regardless, as the Applicant was not successful in this Application, I find that the Applicant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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: February 22, 2023

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Residential Tenancy Branch