

## Decision

Dispute Codes: MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on July 22, the landlord did not participate in the conference call hearing.

### Issue(s) to be Decided

Does this tenancy fall under the jurisdiction of the Act?

Are the tenants entitled to a monetary order as claimed?

### Background and Evidence

The undisputed evidence of the tenants is that the rental unit is a single room in a home in which the landlord and up to three tenants lived on the upper floor and up to 8 tenants lived on the lower floor where the rental unit is situated. The tenants on the lower floor shared bathroom and kitchen facilities and the tenant testified that when the landlord was working in the yard, he would occasionally wash his hands in the bathroom or kitchen on the lower floor but otherwise used the facilities on the upper floor.

On or about June 19, the landlord entered the rental unit and physically pushed one of the tenants. The tenants vacated the rental unit as they no longer felt safe living there. On June 22, the tenants gave the landlord their forwarding address in writing.

The tenants seek to recover two weeks of rent and their \$315.00 security deposit.

### Analysis

The first issue to which I must turn my mind is whether or not this tenancy falls under the jurisdiction of the Act. The Act specifically excludes living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of the accommodation. I have no evidence before me that the landlord owns the residential property. Further, although the landlord would occasionally wash his hands in the bathroom or kitchen sink, I am not satisfied that this amounts to sharing the facilities. For these reasons I

am satisfied that I have jurisdiction to address the tenants' claims.

I am satisfied that by pushing the tenant, the landlord fundamentally breached the tenancy agreement by breaching her right to security of the person. I find that the tenants are entitled to recover rent from June 19 – 30 inclusive. The tenants paid \$630.00 in rent for the month of June. I award the tenants \$252.00 which represents 12 days of June in which they were unable to occupy the unit.

I find that the tenants provided the landlord with their forwarding address on June 22. The Act provides that when the tenancy has ended, the landlord has 15 days from the time the forwarding address is received to file a claim against the deposit. In this case there is no evidence that the landlord has filed such a claim. I find that the tenants are entitled to the return of their security deposit and I award the tenants \$315.00.

I grant the tenants a monetary order under section 67 for \$617.00 which represents a \$252.00 rental refund, the \$315.00 security deposit and the \$50.00 filing fee paid to bring this application. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenants are awarded \$617.00.

Dated November 12, 2009.