



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenants' application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

As a preliminary matter, I noted that the tenants had included a claim for punitive damages in making their application. The parties were informed that I cannot award punitive damages. The tenants stated they wished to proceed on their claim related to overpaid rent. Accordingly, this decision pertains only to the issue of overpaid rent.

### Issue(s) to be Decided

Have the tenants established an entitlement to compensation for overpaid rent?

### Background and Evidence

The parties provided undisputed evidence as follows. The tenants took occupation of the rental unit in mid-July 2008 and vacated at the end of July 2010. The parties signed a tenancy agreement, including a two page Addendum, on July 18, 2008. On page 2 of the tenancy agreement the rent is recorded as \$800.00 per month. Clause 17 of the Addendum provides:

17. Rental payment is \$800.00/month to be comprised of \$700.00 in monetary form and the additional \$100.00 to be exchanged for duties performed on a monthly basis as agreed upon between management and tenant. [reproduced as written]

It was undisputed that the tenants made the following rent payments during the tenancy:

2008: \$700.00 per month  
2009: \$700.00 per month for 4 months and \$800.00 per month for 8 months  
2010: \$700.00 per month for 3 months and \$800.00 per month for 4 months

The tenants submitted that the tenants performed duties on the residential property every month except their last month of tenancy. The tenants claim that in September 2008 the landlord approached them about paying an additional \$100.00 per month due to an increase in fire insurance premiums. The tenants felt they had no choice but to pay the additional \$100.00 per month or have to move and that they were not in a position to move. The tenants are seeking to recover \$1,200.00 in rent overpayments.

The landlord denied that the landlords requested additional rent of \$100.00 per month due to fire insurance. Rather, the landlord submitted that the tenants paid \$800.00 per month for certain months because they did not perform the duties requested of them by the landlords.

## Analysis

Under the Act, the landlord is responsible for preparing a written tenancy agreement for every tenancy entered into after 2004. To be enforceable a term of a tenancy agreement must not be inconsistent with the Act or regulations, must not be unconscionable, and must be expressed in a manner that clearly communicates the rights and obligations under it.

Page 6 of the tenancy agreement signed by the parties indicates that there is an Addendum to the tenancy agreement and that there are 17 additional terms that form part of the tenancy agreement. Therefore, in determining the obligation to pay rent I have referred to page 2 of the tenancy agreement and clause 17 of the Addendum.

Given the landlords' obligation to provide a tenancy agreement that clearly communicates its terms so that the parties are aware of the rights and obligations under the tenancy agreement, where there is a conflict between two terms or provisions within the tenancy agreement, I have applied the provision that is more beneficial for the tenants. I find clause 17 of the Addendum is more beneficial for the tenants.

Upon reading clause 17 of the Addendum, I find that the tenants were required to pay \$700.00 per month in monetary form. Clause 17 does not contemplate payment of any amount greater than \$700.00 in monetary form even if duties are not performed or performed to a standard deemed unacceptable by the landlord. Accordingly, I find the tenants were not obligated under the tenancy agreement to pay any more than \$700.00 in monetary form every month, regardless of their provision of services to the landlords.

It is important to note that I have not made a determination as to whether the landlords approached the tenants about paying more for fire insurance or whether the tenants did or did not provide services for the landlords during certain months. I find such determinations are not necessary given the wording of clause 17 that limits the landlords' entitlement to rent of \$700.00 per month in monetary form.

In light of the above, I find the tenants are entitled to recover the portion of monetary rent payments made in excess of \$700.00 per month. I provide the tenants with a Monetary Order in the amount of \$1,200.00 to serve upon the landlords. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court if necessary.

## Conclusion

The tenants were successful in establishing that they overpaid \$1,200.00 in monetary rent payments and the tenants have been provided a Monetary Order for that amount to serve upon the landlords.

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: January 04, 2011.

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Residential Tenancy Branch