



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; an Order for the landlords to comply with the Act, and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing with their advocates, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlords to comply with the Act?

### Background and Evidence

The tenant attending testifies that the rental unit had mould in it. This mould penetrated the carpet in the bedroom which was so bad the tenants sought permission from the female landlord to remove the carpet and paint the floor. The tenant states when the carpet was removed they found their box spring for the bed to have mould damage. The box spring requires replacement and the tenant states this will cost \$199.00 to replace. The tenant states the box spring has been wrapped in plastic so they can continue to use it until it can be replaced. The tenant states she called the female landlord and informed her of this damage and requested the landlords reimburse the tenants for this cost.

The tenant testifies that their rent was \$600.00 per month which included power, heat and satellite services. The tenant states their first agreement was verbal until the landlord asked them to sign a tenancy agreement on December 14, 2010. The tenant states in March 2010 the landlord gave the tenants an unlawful rent increase taking the rent to \$730.00. The tenant states as they were not familiar at that time with the Residential Tenancy Act they paid the additional rent. The tenant states when they called the Residential Tenancy Office in July 2011 they were informed that this rent increase was too large and the tenant were over paying by \$80.20. The tenant states she did not file an application at that time to claim this sum back but then in November, 2011 the tenant received a disconnection letter for the Hydro. As Hydro is supposed to be included in their rent they decided to then file a claim against the landlords'.

The tenant seeks to recover the overpayment of rent for 21 months to the sum of \$1,684.20.

The tenant testifies that they have now given the landlord written notice to move from the rental unit on January 08, 2012. The tenant states they can no longer live in this unit with the threat of having their Hydro disconnected and because the landlords have failed to maintain the property. The tenants seek an Order for the landlords to comply with the Act with regard to ensuring Hydro is provided until they move from the rental unit as per their tenancy agreement.

The tenants seek to recover the mailing costs incurred in sending the hearing documents to the landlords of \$34.14. The tenants also seek to recover their \$50.00 filing fee paid for this application.

The landlord testifies that he is the landlord and not the other person the tenants have been dealing with and paying their rent to. The landlord testifies that the tenants wanted this other person's name on their new tenancy agreement but this other person has not signed the tenancy agreement. The landlord testifies that the two landlords named on the agreement were partners but he had to get a no-contact court order between them and so he was not informed of any repair issues required in the rental unit as the tenants only dealt with the female landlord. The landlord testifies he informed the tenants that he was the landlord but they would not acknowledge this and continued to deal only with the female landlord. The landlord states he cannot therefore be held responsible for any damage to the tenants belongings caused by mould as he had never been informed of the mould issue.

The landlord testifies that the rent for this unit was increased as the tenants paid a reduced rent previously because they had been employed by the landlord to do work on the farm in exchange for Hydro. The landlord testifies that this was a verbal agreement and the tenants' employment ended around March 2010.

The tenants dispute the landlord testimony that they were employed by him. The tenant testifies that they never had an employment arrangement and never received a wage or reward from the landlord. The tenant testifies that when they first moved into the unit the landlord asked them to feed the horses in the winter months when the landlords went south for the winter. The tenants state this arrangement was not an employment arrangement and ended because there was no benefit to them with a rent reduction during these months.

The tenant testifies they always dealt with the female landlord as she collected their rent to pay the mortgage. The tenant testifies the landlord had disconnected their satellite dish and when the police were called the police women attending told the male landlord to stay away from the tenants. The tenant states therefore they communicated only with the female landlord.

The landlord and tenant presented other evidence concerning alleged unpaid rent that is not relevant to this application or my decision. I looked at the evidence that was relevant and based my decision on this.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Firstly, with respect to the tenants claim for damages to a box spring, the onus is on the tenants to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlords failure to comply with the *Act* or the tenancy agreement;
3. The actual amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have no evidence before me to support the tenants claim that the box spring has mould on it which requires the box spring to be replaced and I have no evidence before me with respect to the actual or even estimated amount for replacement costs for the box spring, and therefore, I find that the landlord has failed to satisfy elements one, two and three of the above test. Consequently, the tenants claim for damage to the box spring cannot succeed and is dismissed without leave to reapply.

With regard to the tenants claim to recover an unlawful rent increase for 21 months; both parties agree that the rent for this unit was \$600.00 at the start of the tenancy. The landlord argues that the tenants were employed and the employment reward was for the

landlord to pay their Hydro costs. The tenants dispute this and state they were never employed, Hydro was always included in their rent and the landlord simply put up their rent without following the correct procedures.

I have reviewed the documentary evidence and the oral testimony of the parties and find the landlord has provided no evidence to show that the tenants were employed up to March, 2010. Consequently, the landlord is not entitled to increase the tenants rent without providing them with three months written notice on an approved rent increase form and is not entitled to increase the rent more than 3.2 percent for 2010. Therefore, the tenants are entitled to recover some of this rent increase. However, the tenants did enter into a new tenancy agreement with the landlord on December 14, 2010 in which they agree to pay rent of \$730.00 per month. Consequently, from that date the landlord is entitled to rent at that agreed upon rate. The tenants will receive a Monetary Order for the unlawful rent increase from March 01, 2010 to December 14, 2010 to the sum of **\$1,235.00** pursuant to s. 67 of the Act.

The landlord argues that he was the landlord of the rental unit and not the other person named on the tenancy agreement which was unsigned by this other person. However, when a relationship either business or personal has broken down between landlords the tenants should be kept out of any conflict between the landlords and if this landlord maintains that he is the sole landlord the other landlord should not have been named on the tenancy agreement whether or not she signed the agreement as this serves to provided conflicting messages to the tenants. The tenants should have been informed in writing who was the landlord, who had responsibility to maintain the unit and collect the rent and who was responsible for the tenancy.

I find, by their very nature, that verbal agreements are difficult to proof and for a third party to interpret. In light of this I have no evidence to show that the Hydro was part of the rent agreement at the start of the tenancy; however, the landlord agrees he did pay the Hydro at that time therefore I must conclude that the tenants testimony is more credible in this matter. The written tenancy agreement entered into on December 14, 2010 does clearly show that water, electricity, heat and cable vision are included in the

rent. Therefore, the landlord must ensure the tenants have access to these services and facilities up to the end of their tenancy in accordance with s. 27 of the Act which states;

A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

Consequently, **I ORDER the landlords** to comply with the Act with regard to the tenants right to Hydro and as a disconnection Notice has been issued I Order the landlord to ensure this service is not disconnected. With regard to the tenants claim that the landlords have failed to maintain the property and their request for an Order for the landlords to comply with the Act in regards to this failure; as the tenants have given Notice to end the tenancy and will be vacating the rental unit on January 08, 2012, no further Orders will be issued concerning this portion of their claim.

With regard to the tenants claim to recover mailing costs of \$34.14; this type of claim is unsupported under the Act and therefore the tenants are not entitled to make a claim to recover these costs. This section of the tenants claim is therefore dismissed without leave to reapply.

As the tenants have been partially successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the tenants for the following amount:

Overpayment of rent	\$1,235.00
Filing fee	\$50.00

Total amount due to the tenants	\$1,285.00
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Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,285.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the landlord to comply with s. 27 of the Act and ensure the tenants Hydro is maintained.

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: December 19, 2011.

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Residential Tenancy Branch