



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

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

The tenant and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The 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

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act?

### Background and Evidence

Both parties agree that this month to month tenancy started on September 01, 2007. A tenancy agreement was signed by both parties on June 28, 2007. Rent for this pad was agreed at \$180.00 at the start of the tenancy and documented as such in the tenancy

agreement. By the end of the tenancy in September, 2011 rent had increased to \$289.00. Rent was due on the first day of each month in advance.

The tenant testifies that he started paying his pad rent of \$180.00 on September 01, 2007 although his trailer did not arrive on site until October 24, 2007. The tenant testifies that the landlord informed him later in September that as his trailer had not arrived on time his rent would go up to \$250.00 in line with the rent charged at that time for all new trailers. The tenant testifies he was not aware of his rights as a tenant so paid the increased rent of \$250.00 from October 01, 2011. The tenant testifies that he became aware that this was an illegal rent increase towards the end of his tenancy in September, 2011.

The tenant testifies that due to this illegal rent increase at the start of his tenancy the other rent increases made throughout the tenancy would have been made based on this illegal amount. The tenant testifies the rent went up again with proper notice on May 01, 2009 to \$275.00, on May 01, 2010 to \$283.00, on May 01, 2011 to \$289.00.

The tenant seeks to recover the over payment of rent for each year and has calculated the over payments based on his original rent as agreed of \$180.00. The tenant seeks to recover 20 months additional rent of \$70.00 per month to the sum of \$1,400.00 for the illegal 2007 increase; the sum of \$924.00 for the increase made in 2009. The sum of \$948.00 for the increase made in 2010, and the sum of \$324.00 for the increase made in 2011. The total amount of illegal rent increase the tenant seeks to recover is \$3,596.00

The tenant also seeks to recover his \$50.00 filing fee paid for this proceeding.

The landlord's agent testifies that she discussed the original rent increase in October 2007 with the tenant and he agreed to pay this amount. The landlord's agent testifies she was remiss in not changing the rent payments due on the tenancy agreement and was remiss in not getting the tenant to agree to this increase in writing. The landlord

testifies the tenant did not disagree with any of the subsequent rent increases when proper notice was given to him and so disputes the tenants claim to recover the rent increases.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer both parties s. 35 (1)(a) of the Act which states:

A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

S.36 (1)(c) of the Act states;

A landlord may impose a rent increase only up to the amount

(c) Agreed to by the tenant in writing.

S. 36 (5) of the Act states:

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

It is my decision that the landlord did impose a rent increase one month after the start of the tenancy without written agreement from the tenant in contravention of s. 35 (1)(a) and s. 36(1)(c) of the Act. Consequently by imposing this rent increase it made all the other increases throughout the term of the tenancy made in line with this illegal increase to be more than the allowable amount. Consequently, I find the tenant is entitled to recover the amounts paid for the illegal increase and the subsequently amounts made each year based on the higher rent. However, for the first increase the tenant has calculated this rent to have been paid for 20 months when in fact it was paid over 19 months. Therefore the tenant's calculations have been adjusted accordingly.

The tenant has established his claim for the return of rent to the sum of **\$1,330.00** from October, 2007 to May, 2009; **\$924.00** from May 2009 to May 2010; **\$948.00** from May 2010 to May 2011; and **\$324.00** from May 2011 to August, 2011 to a total sum of **\$3,526.00**. **The tenant** has been issued with a Monetary Order pursuant to s. 60 of the Act.

As the tenant has been largely successful with his claim I find the tenant is also entitled to recover his **\$50.00** filing fee from the landlord pursuant to s. 65(1) of the Act

### Conclusion

I HEREBY FIND largely in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,576.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: December 01, 2011.

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Residential Tenancy Branch