



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male landlord (the landlord) confirmed that the landlords received a copy of the tenant's dispute resolution hearing package sent by registered mail on March 18, 2013. I am satisfied that the tenant served this package to the landlords in accordance with the *Act*. The tenant testified that she had not received one of the landlords' written evidence packages. This package contained a two page letter from the landlords explaining their position with respect to the tenant's claim. Although I did not consider this document as part of my decision-making, the landlord said that he presented the views expressed in that letter in his sworn oral testimony. I have considered all other written evidence that both parties confirmed receiving from one another.

### Issues(s) to be Decided

Is the tenant entitled to a monetary Order for losses arising out of this tenancy? Is the tenant entitled to recover her filing fee for her application from the landlords?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and documents, copies of the two residential tenancy agreements and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This tenancy for the rental of a manufactured home commenced as a periodic tenancy on November 1, 2011. The landlord gave undisputed sworn testimony that the manufactured home had previously been owned by the tenant and her husband, the co-tenant. Both tenants signed the original periodic tenancy agreement on October 30, 2011. Monthly rent was set at \$500.00 in this first tenancy agreement between the parties (the first tenancy agreement), payable in advance on the first of each month.

On July 18, 2012, the landlord handed the tenant(s) a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The landlord gave undisputed sworn testimony that he issued the 1 Month Notice for the tenants' repeated late payment of their rent. He said that the tenants were late in paying their rent on nine occasions.

The tenant testified that she and her husband filed an application for dispute resolution with the Residential Tenancy Branch (the RTB) to cancel the landlords' 1 Month Notice within the time period for doing so. She identified the RTB file number and said that she attempted to serve the landlord with the tenants' dispute resolution hearing package on July 26, 2012. She said that the tenants had routinely paid their rent a few days after the start of each month to coincide with their pay schedule. She said that the landlords had not raised this as a concern until the landlords issued the 1 Month Notice. The tenant testified that the landlord told the tenants that the landlords had reconsidered the 1 Month Notice and were willing to let them remain in the manufactured home. They agreed to enter into another tenancy agreement that would enable the tenants to stay in the manufactured home until the landlords sold the manufactured home the following year. Since the tenants understood that the landlords were no longer pursuing the 1 Month Notice, the tenants withdrew their application to cancel the 1 Month Notice.

The landlord was insistent that even though the tenants had applied to cancel the 1 Month Notice, they would have to vacate the rental unit by August 31, 2012, the effective date of that Notice. This was because the tenants had been late in paying their rent on an ongoing basis. The landlord testified that the tenants "begged" to remain in the manufactured home rental and said they were prepared to make any commitments necessary to avoid ending this tenancy. The landlord said that the landlords could not commit to re-renting on the basis of a periodic tenancy at that time as they were planning to sell the trailer in 8 months. This required the preparation of a new tenancy agreement as he considered the original tenancy agreement of no continuing effect as the tenancy was set to end by August 31, 2012 for cause.

On August 2, 2012, the same parties signed a new tenancy agreement (the second tenancy agreement) covering the period from September 1, 2012 until April 30, 2013. All four signatories to this second tenancy agreement initialled the section of the

agreement signifying that the tenancy ended on April 30, 2013, by which time the tenants would have to vacate the rental unit. The agreed rent for this second tenancy agreement was \$750.00. The landlord said the original rent in the first tenancy agreement was set at a rate below the market rent as it was designed to enable the tenants to save some money so that they could repurchase this manufactured home from the landlords.

The tenant testified that the landlord had not advised the tenants that the rent would be increasing 50% to \$750.00, when the landlords agreed to reconsider their 1 Month Notice. She said that she only became aware of the landlords' intention to raise their rent after the tenants had withdrawn the tenants' application for dispute resolution to cancel the 1 Month Notice. However, the tenant also testified that the tenants had not paid their monthly rent by the first of the month on at least three occasions, the grounds for the landlords' 1 Month Notice. The tenant gave sworn testimony, written and photographic evidence to support her assertion that this manufactured home was not in a condition that could command the market rent of \$750.00.

The tenant's application for a monetary award of \$1,750.00 sought the recovery of \$250.00 per month in rent for a 7-month period of this tenancy. She maintained that the landlord had increased the tenants rent by 50%, an amount in excess of the allowable amounts of rent increases permitted under the *Act* and the *Residential Tenancy Regulation* (the *Regulation*). She testified that the landlords had not applied for authorization to exceed the 4.3% permitted increase allowed for 2012 by the legislation. She also maintained that the landlords had not provided the tenants with the 90-day notice of their rent increase as required by the *Act*.

### Analysis

The tenant is correct in noting that the *Act* and *Regulation* prevent a landlord from increasing rent beyond the permitted percentage increase for a given year without obtaining authorization to do so from an Arbitrator appointed under the *Act*. In 2012, the allowable increase was set at 4.3%.

As outlined below, section 43 of the *Act* allows a landlord to apply to an Arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

- 43** (1) *A landlord may impose a rent increase only up to the amount*
- (a) calculated in accordance with the regulations,*
  - (b) ordered by the director on an application under subsection;*
- or*
- (c) agreed to by the tenant in writing.*

*(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.*

*(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.*

The *Residential Tenancy Regulation* (the *Regulation*) pursuant to the *Act* sets out the limited grounds for applying for an Additional Rent Increase.

In this situation, the principal issue before me is whether the landlords did in fact increase the tenants' rent by 50% in contravention of the *Act* and the *Regulation* and without providing proper notification.

Both sides provided conflicting evidence as to whether the tenants realized that the landlords planned to increase the monthly rent in the second tenancy agreement between the parties. While the tenant claimed that she would not have cancelled her scheduled RTB hearing of the tenants' application for dispute resolution had she known that the landlords were increasing their rent to \$750.00 per month, the landlord testified that the tenants knew that the landlords would be seeking this amount of rent in any new tenancy agreement to continue this tenancy beyond August 31, 2012, the effective date of the 1 Month Notice.

In considering this matter, I find the best evidence is the written terms of the two tenancy agreements. In the first tenancy agreement, the parties agreed to a periodic tenancy, which clearly could only be increased in accordance with the rent increase provisions of the *Act* and the *Regulation*. Had the landlords not issued a notice to end tenancy or had the parties not entered into a new signed tenancy agreement on different terms, the landlords would not have been able to increase the tenants' monthly rent without their written permission.

I find that the situation changed when the tenants signed the second tenancy agreement, a new fixed term tenancy between the parties. Not only did all four parties to this second agreement sign this agreement setting the new monthly rent at \$750.00, the issue in dispute in this hearing, but the parties also agreed to another equally fundamental change to the nature of their previous agreement. In the second tenancy agreement, the parties agreed that the tenancy would end as of April 30, 2013, by which time the tenants would be required to vacate the rental unit. These are both substantial changes to the terms of the first tenancy agreement. I can appreciate that the tenant believed that she had little option but to agree to these revised terms of the second

tenancy agreement. However, I find that the tenants withdrew their existing application to cancel the landlords' 1 Month Notice before signing the second tenancy agreement. Based on the testimony of the parties, I find that both parties realized by that time that the tenants had little prospect for success in their application for dispute resolution as they both agreed that the tenants had not paid their rent on time on many occasions, the grounds cited in the landlords' 1 Month Notice.

I am also concerned about the delay in the tenants' raising of concerns about the alleged illegality of the landlords' actions in raising their rent beyond the amount allowed under the legislation. The tenant claimed that the tenants withdrew their application for dispute resolution seeking the cancellation of the 1 Month Notice before they were aware that the landlords intended to increase the monthly rent to \$750.00. Whether or not this was correct, the tenants were clearly aware by the time they signed the second tenancy agreement on August 2, 2012 that the landlords had increased their monthly rent from the \$500.00 charged in the first tenancy agreement to \$750.00 per month commencing on September 1, 2012. They paid this rent for many months until they filed for dispute resolution seeking recovery of the \$250.00 difference between these two rental figures on March 13, 2013, little more than a month before the end of their tenancy.

The legal principle of *laches* is of assistance in considering the tenant's delay in seeking the recovery of seven months of "overpaid" rent as set out in the tenant's current application for a monetary Order. Black's Law Dictionary defines the "doctrine of *laches*" in part, as follows:

*[The doctrine] is based upon the maxim that equity aids the vigilant and not those who slumber on their rights.*

*...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.*

In the context of this situation, I utilize the doctrine of *laches* in finding that the tenant demonstrated undue delay in attempting to reverse what the tenant is now claiming was an overpayment of rent to the landlords. The tenants clearly knew of this alleged overpayment as early as August 2, 2012, when they signed the second tenancy agreement, under what the tenant claimed was an element of duress.

For the reasons outlined above, I find that the tenants' agreement to the terms contained in the second tenancy agreement, including the amount of the rent set for the new 8-month fixed term tenancy, meets the requirements of section 43(1)(c) of the *Act*. I find that the second tenancy agreement created a new contract that superseded the

contract established under the first tenancy agreement. Although the first tenancy agreement was not scheduled to end until August 31, 2012, the parties entered into a new tenancy agreement on August 2, 2012, to reflect changed circumstances that both recognized at that time. I also find that the tenant's delay in waiting a further seven months to challenge the legality of the terms the tenants agreed to in the second tenancy agreement does not lend credibility to the tenant's account of events or to her current application for a retroactive rent rebate. Under these circumstances, I dismiss the tenant's application without leave to reapply.

As the tenant has been unsuccessful in her application, I also dismiss her application to recover her filing fee from the landlords.

#### Conclusion

I dismiss the tenant's application without leave to reapply.

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: June 11, 2013

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Residential Tenancy Branch

