



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNSD, MNDC, PSF, RR, FF

### Introduction

This hearing was convened by way of a conference call in response to an application made by the tenants for the following issues:

- To dispute an additional rent increase;
- For a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- For the return of all or part of the pet damage or security deposit;
- For the landlord to provide services or facilities required by law;
- To allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and
- To recover the filing fee from the landlord for the cost of this application.

At the start of the hearing the landlord withdrew the Notice of Rent Increase served to the tenants on April 28, 2013 as the amount of rent increase was invalid and the landlord did not want to pursue any rent increase because the tenants had ended the tenancy for June 30, 2013. The tenants also withdrew their application for the return of the security and pet damage deposit since the tenancy has not ended at this point.

The tenants served the landlord with a copy of the application and Notice of Hearing documents and based on this I find that the landlord was deemed to be served as per the *Residential Tenancy Act*.

Both parties provided documentary evidence in advance of the hearing and attended the hearing to give affirmed testimony. Both parties were also given a chance to cross examine each other on the evidence provided. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
- Are the tenants entitled to a monetary order for losses incurred under the Act?
- Is the landlord required to provide services or facilities required by law?

Background and Evidence

Both parties agreed that the tenancy started on July 20, 2012. A written tenancy agreement was not completed but rent in the amount of \$1,200.00 is payable by the tenants on the 1<sup>st</sup> day of each month. The landlord collected a security deposit from the tenants in the amount of \$1,200.00. The landlord testified that this covered the pet damage deposit but testified that he had not specifically made a request for this from the tenants. The tenants acknowledged that they had pets and that the \$1,200.00 included the pet damage deposit. The tenants testified that the property had been viewed on the same day the tenancy was entered into but no condition inspection report was completed.

The landlord and tenant disputed the nature of the tenancy. The landlord testified that the tenancy was a month-to-month and the tenant's testified that it was a fixed term with no specific end date. The tenants testified they had invested a lot of time and cost into the tenancy with the understanding that they were going to be staying on a long term basis.

The tenants testified that they were served with a Notice of Rent Increase by the landlord. They explained to the landlord that the rent increase amount was not legal. As a result, the tenants testified that this gave the landlord motive to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property on May 27, 2013 with an effective move out date of July 31, 2013. The tenants testified that they have already given the landlord written notice to leave at the end of June, 2013 and have already obtained their compensation with the agreement of the landlord.

The tenants testified that they seek a total of \$7,665.47 from the landlord for the losses they have incurred. This includes: \$2,000.00 for non compliance with tenancy terms; \$1,965.48 for moving in and moving out costs because the landlord gave them a notice to end the tenancy when they intended on staying for a longer period; \$84.00 for change of address costs; \$2,400.00 for home improvement costs and \$15.99 for dispute resolution costs.

The tenants testified that when they took up occupancy the stove elements and broil function did not work, the showerhead in the shower was broken and the water coming from the tap was not clean and had a smell to it. This was brought to the attention of the landlord who failed to take action. After a month the tenants purchased a showerhead, for which a receipt was provided, at a cost of \$47.03 and \$200.00 for a water cooler. After a month, the landlord fixed these items.

The tenants also testified that they purchased a number of items to furnish the home with fixtures such as a towel holder, toilet roll holders, bathrooms cabinets, a kitchen island and stools. The tenants also stated that because the landlord had a tendency to come over to the rental unit as he pleased and look into the windows, they were forced to install blinds and curtains at a cost of \$120.93. They also painted the entire house, the cost of which was \$1,000.00.

The tenants also testified that their access to the garden was restricted as per the original verbal agreement they had because the landlord stated that nothing could be planted in the garden beds as they were being used by other people due to shared ownership of the property. However, the landlord offered them a small patch close to the rental unit. A week later when the tenants tried to plant flowers the landlord said they should not bother as he would be issuing them with a notice to end tenancy.

The tenants also testified that the landlord had a large amount of junk under the property which was agreed at the start of the tenancy, would be removed thereafter. The landlord failed to remove it, instead, he visited the property several times to access the items, thus causing a disturbance to the tenants and causing them to lose their right to quiet and peaceful enjoyment of the property. The tenants also testified that due to the problems they had with the landlord they chose to let these issues go.

The landlord testified that he did eventually replace the stove with a brand new one and the tenants were given access to an area of the gardens for planting. The landlord denied telling the tenants that the items stored under the house would be all moved and stated that he had access to the area in order to store his personal property. The landlord states in his written submissions that no permission was given to the tenants to make the changes they did such as, installation of furnishings and painting of the unit, as this had been done prior to the tenants moving in. This was evidenced by a witness statement, provided as evidence, stating that the property had been painted before the tenants moved in.

### Analysis

Both parties were in conflict about the type of tenancy this involved. The *Residential Tenancy Act* states that a fixed term tenancy is one where a tenancy agreement specifies when the tenancy ends. This tenancy was not documented in a written tenancy agreement and no such fixed end date could be provided or agreed upon by the parties. Therefore, I find this tenancy to be a month-to-month tenancy.

Although the tenants have not disputed the 2 Month Notice to End Tenancy, for the purposes of the tenant's claim for monetary compensation, I determine that the notice has been issued to the tenants in accordance with the *Act*. The tenants moved to the rental unit of their own volition, therefore, are not eligible for moving-in expenses. The tenants have already obtained compensation through the notice to end tenancy and therefore, are not eligible for the moving-out expenses or the costs associated with this, such as the costs for change of address and dispute resolution. As a result, I dismiss this portion of the claim for these expenses.

The tenant testified that they have provided written notice to the landlord to end the tenancy at the end of June, 2013 as per Section 50 of the *Act*. As the tenancy will no longer be continuing after this date, I decline to order the landlord to provide services or facilities required by law and, I dismiss this portion of the claim.

The landlord testified in his written submissions that the tenants were not given permission to make changes to the unit such as home improvements and painting. The landlord provided a witness statement stating that the unit was painted at the start of the tenancy and the tenants simply wanted to paint it another color. The tenants have not provided any evidence that the landlord agreed to the changes or that the changes were necessary. I accept the evidence of the landlord and, as a result, I dismiss this portion of the claim by the tenants for the painting and supplies.

In making a determination of the tenant's entitlement to losses under the *Act* and a reduction in the value of the tenancy, I have considered the following:

- Section 32 of the *Act* states that a landlord, having regard for the age, character and location must make it suitable for occupation by a tenant by maintaining it in a suitable state of decoration and repair. After examining all of the evidence before me, including photographic evidence submitted by the tenants, I find that the landlord failed to do this by not completing repairs requested by the tenant in

a timely manner and preventing the tenants from obtaining exclusive possession of the rental unit by using a portion of the rental unit for the landlord's purposes.

- Section 7(2) of the *Act* talks about the duty of a landlord or tenant who makes a claim for compensation for damage or loss from the other's non compliance with the *Act*, to mitigate losses. The tenants failed to seek remedy with the landlord or bring an application against the landlord, choosing instead to let the issues go and make purchases without the landlord's permission. Therefore, I find that the tenants failed to comply with this section and I am unable to award losses incurred by the tenants for the remaining duration of the tenancy.

In determining the amount of the tenant's compensation, I have taken into consideration the costs incurred by the tenants, as provided by receipts, to ensure a reasonable standard of tenancy was obtained, such as clean drinking water and the slow action taken by the landlord to make adequate repairs. This also includes the fact that the landlord used the rental unit for storage purposes and failed to give exclusive possession to the tenants of the rental unit.

As a result, I award the tenants monetary compensation for the losses incurred and the reduction in the value of the tenancy as follows: the tenants claimed \$200.00 per month for 10 months, for which I have awarded only one month for rental compensation for the loss of quiet enjoyment of the tenancy due to the tenants not mitigating losses for the remainder months; \$47.03 for the cost of the shower head; \$120.93 for the cost of blinds associated with the tenants protecting their privacy; \$200.00 for the water cooler which the tenants had to purchase whilst the water issue was being resolved, and I find that the landlord is entitled to retain the water cooler.

I have not awarded the tenants any compensation due to furnishings, such as kitchen islands and bathroom cabinets, which were added to the rental unit because the tenants have failed to establish that the landlord agreed to or was required to add the kitchen island or the bathroom cabinet.

As the tenants have been partially successful in their claim, I also award the \$50.00 cost of the application for a total monetary award of \$617.96.

### Conclusion

For the reasons set out above, I find the tenants are entitled to monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$617.96**. This

order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenants' application for an order permitting the tenants to reduce rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord provide services or facilities required by law is hereby dismissed 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 28, 2013

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Residential Tenancy Branch