



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Domus Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, MNDC, OLC, RP, FF, O

### Introduction

This was a hearing with respect to the tenants' application to dispute a rent increase, for a monetary order, a repair order, an order that the landlord comply with the Act and for other relief. The hearing was conducted by conference call. The tenants and the landlord's representatives attended the hearing. The tenants improperly named the landlord's representatives as landlords on this application. The proper party has been added as the landlord respondent.

### Issue(s) to be Decided

Did the landlord levy an illegal rent increase? Are the tenants entitled to a refund?  
Are the tenants entitled to a repair order?  
Are the tenants entitled to a monetary award for loss of quiet enjoyment?  
Are the tenants entitled to any other relief?

### Background and Evidence

The rental unit is an apartment in New Westminster. The tenancy began in September, 2003. In their application for dispute resolution the tenants raised a series of complaints. They first complained that they have received an unlawful rent increase. The tenant testified that the landlord raised their rent from \$1,205.00 per month to \$1,225.00 per month effective September 1<sup>st</sup> without giving notice of the rent increase. The tenant complained that they were also charged a late fee.

The tenants complained that their mailbox was broken into in January, 2013. They said that it took the landlord six weeks to repair the mail box, which was an unreasonable delay. They said it was again broken into in April and it was fixed within a week.

The tenants complained about parking. They said they were assigned designated stalls where they have been parking for the past 10 years. The tenants complained that another occupant of the building has parked different cars in the tenants' spaces in

June, 2013, in July and several times in August. The tenants said that they have complained to the resident managers but their complaints have not been taken seriously.

The tenants complained about repair issues, in particular a bathtub repair that had not been performed in a timely manner. The landlord's representatives testified that the tenants refused to allow the landlord to make the repair. During the hearing it was agreed between the parties that the landlord's representative would attend at the rental unit the following day, October 26, 2013 in order to carry out the necessary repairs. The tenants agreed that they would follow the landlord's instructions about keeping the bathtub dry before and after the repair.

The tenants complained about smoking in the rental property. They said they have made the landlord aware of persons smoking in the building, contrary to bylaws and regulations prohibiting smoking, but the landlord has not acted to prevent people from smoking. The tenants complained that the smoking interfered with their use and enjoyment of the rental unit. They said there have also been incidents of marijuana use in the rental property.

The landlord responded to the tenant's concerns by letter dated September 30, 2013. It said that:

The landlord is in receipt of email correspondence noting your observations regarding smoking at (address of rental property). For clarification, smoking is not permitted in the building's common areas, in accordance with the Corporation of New Westminster's smoking control bylaw, but tenants are permitted to smoke on their patios and balconies, as these are reserved for the private use of each tenant and are not considered to be common areas.

As a courtesy to you, we will contact your neighbouring tenants and make them aware of your concerns.

The tenants complained about noise. They said that in February, 2011 the tenants above them made lots of noise. The tenants said they complained to the landlord and was told that they could not do anything about it. The tenants said the noisy tenant moved to another suite after a year but the new tenant who moved in was also noisy. The tenants submitted a February 2011 letter from the landlord responding to the noise complaint and a copy of an April 2011 e-mail to the landlord concerning noise. The tenants did not submit any other documents concerning notice to the landlord of a noise problem.

The tenants complained about safety in the rental property, in particular about another tenant who they allege is selling used cars out of the building and compromising the safety of residents by allowing strangers onto the property. The tenants complained about the attitude of the resident managers. The tenants testified that the resident manager has been rude and hostile towards the tenants.

The tenants claimed compensation for noise in the amount of \$761.00, calculated at \$1.00 per day for two years and one month. They claimed compensation for marijuana and smoking for 214 days at \$1.00 per day and they claimed compensation for the bathtub in the amount of \$898.00 at \$1.00 per day beginning in March 2011.

With respect to the Notice of Rent Increase, the landlord's representatives said that the landlord served the tenants with notice of the rent increase by registered mail. According to the landlord's documents the Notice of Rent increase was dated April 10, 2013, but it was sent by registered mail on April 22, 2013. The postal records showed that the mail was attempted to be returned to the sender for reasons that were not stated. The item was unclaimed and it was finally returned to the landlord on May 21, 2013. The landlord has taken the position that the Notice of Rent Increase was sent to the tenants by registered mail and although the tenants may have failed to pick up the registered mail, that is their own fault. The landlord maintained that the tenants should be deemed to have received the Notice of Rent increase and should therefore be bound by it commencing on September 1, 2013.

The tenants testified that they did not receive the rent increase and did not get notice of any registered mail, likely because the mail box was broken into in April. They say they are not bound by a rent increase that they have not received.

### Analysis

Dealing first with the dispute concerning the Notice of Rent Increase, based on the Canada Post records, I accept the tenants' evidence that they were not served with the Notice of rent increase. I find that the Notice of Rent Increase dated April 10, 2013 has not been served on the tenants and the rent increase did not take effect on September 1, 2013. The tenants' rent will continue at the former rate until such time as the landlord serves the tenants with a new Notice of Rent Increase that will take effect three months after the date that the new Notice is served upon the tenants in accordance with the provisions of the *Residential Tenancy Act*. The tenants are not required to pay the increased rent or late fees claimed by the landlord.

The matter of repair order concerning the bathtub has been resolved at the hearing. The landlord and the tenants agreed upon a time for bathtub repair to be done.

I find that the tenants' complaints with respect to loss of quiet enjoyment due to smoking, noise and other claimed matters do not merit compensation. I accept the landlord's evidence that the rental property is not a non-smoking building and although smoking is prohibited in common areas, occupants may smoke in their own units, including patios and balconies. The tenants' complaints regarding noise relate to events that took place several years ago and it is not reasonable to raise these grievances and seek compensation after such a delay. The landlord is not responsible for much of the delay in completing a bathtub repair and I do not regard this defect as one that should attract compensation for loss of quiet enjoyment. This claim is denied.

The tenants have complained that another occupant is using the rental property for an improper purpose and the photographs supplied by the tenants support their position that an occupant appears to be operating a used car sales business out of the property. This apparently has inconvenienced the tenants and others and raises security concerns. The landlord should take steps to deal with this problem; if it does not and the activities continue, the tenants may be justified in bringing a further application for dispute resolution.

The tenants and the landlord's representative are not on good terms both the tenants and the resident managers accuse each other of rudeness and of having a bad attitude. I am unable to assign blame and at this juncture it does not amount to a situation that would justify an order or some other form of intervention.

### Conclusion

The tenants have been partially successful on this application with respect to the matter of the landlord's claimed rent increase, which I have found to be void and unenforceable because it was not served upon the tenants. The tenants are entitled to recover the \$50.00 filing fee for this application; they may deduct the said sum from the next installment of rent due to the landlord

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: November 20, 2013

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Residential Tenancy Branch

