



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

The tenants apply for a monetary award for return of an allegedly overheld deposit, damages for “loss of enjoyment” and a rebate of monies paid under an alleged illegal rent increase.

It would appear from the documentation that the landlord on the tenancy agreement is an employee of a property management company. All agree at this hearing that the respondent Ms. S. G., the owner, is the proper respondent.

### Issue(s) to be Decided

Does the relevant evidence adduced at hearing show on a balance of probabilities that the tenants are entitled to any of the relief claimed.

### Background and Evidence

In or about February 2008, the attending tenant Mr. V. rented unit 305 in this twenty one unit apartment building and lived there about two years. In 2010 the rental unit in question, unit 103, a two bedroom apartment, became available. Mr. V. together with the other applicant tenant Mr. W.A. rented that unit under a written tenancy agreement commencing May 4, 2010. The rent was \$1000.00 per month due on the first. The agreement shows that a deposit of \$500.00 was required.

It appears that Mr. V.’s existing \$375.00 security deposit was applied to that deposit and his co-tenant Mr. W.A. provided the balance.

In February 2012 Mr. W.A.'s girlfriend, the applicant tenant Ms. D.W. moved into the apartment. It appears the written tenancy was changed at that time. Ms. D.W. was added as a tenant. The rent was raised to \$1200.00 per month. Ms. D.W. appears to have signed the revised tenancy agreement.

At hearing Mr. V. testified that he agreed to the new rent of \$1200.00 but felt he was under "duress" to agree. He says the landlord's property manager threatened to evict him if he did not agree.

Last August, 2013, all three tenants moved from rental unit 103 to another two bedroom unit, 203 at the same rent. A new tenancy agreement has not been prepared.

Regarding the claim for "loss of enjoyment", the tenant Mr. V. gave evidence that the premises were in a very poor state when he moved in back in 2010. Mr. V. was informed of the two year time restriction for bringing a claim imposed by the *Limitation Act* of British Columbia. He chose to withdraw the claim for loss of enjoyment.

The tenant Mr. V. argues that only \$250.00 of his \$375.00 security deposit for unit 305 should have been applied to unit 103 because he was only responsible to pay half the \$500.00 security deposit amount required for that rental unit.

He argues that he should recover the \$500.00 security deposit paid for unit 103 back in 2010 because that tenancy ended when he and his co-tenants moved to unit 203 last August. Further, he says the landlord is responsible to pay double the deposit because the 15 day period (in s.38 of the *Residential Tenancy Act*) from the end of that tenancy has expired.

Lastly, the tenant Mr. V. argues that the increase of rent from \$1000.00 per month to \$1200.00 when Ms. D.W. moved in back in February 2012 was an illegal rent increase, imposed by the landlord without following the law and should be rebated.

The landlord through her legal counsel makes a general denial to the claims, refers to the *Limitation Act* as a defence and argues the rent increase was by agreement not unilaterally imposed. She argues that the existing tenancy agreement for 103 was simply amended verbally to change the rental unit to 203 and that the landlord is lawfully holding the old 103 security deposit for the tenancy in 203.

The landlord alluded to a variety of expenses incurred to repair and clean unit 103 after the tenants moved. However, it was pointed out that the landlord would be required to

make her own application for dispute resolution in order to advance a claim against any of the applicant tenants.

### Analysis

I find the evidence to be clear that when the tenants moved from 103 to 203 last August, they took that tenancy on the identical terms and conditions as 103. The landlord is properly holding \$500.00 as a security deposit for that unit. I dismiss the tenants' claim to recover that deposit.

The fact that the tenant Mr. V. may have paid more than half of that deposit is really a matter to be resolved between him and his co-tenants. It is not the landlord's job to apportion who is to pay what, when, as here, the tenants are jointly and severally responsible. I therefore dismiss this aspect of the tenants' claim.

The evidence shows that the change from \$1000.00 rent to \$1200.00 rent was an increase agreed to by the tenants. It has not been "imposed" unilaterally by the landlord and so there was no requirement for any particular notice nor were the statutory rules regarding the amount of rent increases applicable to the increase. The tenant Mr. V. argues that he did not know his rights at the time. In my view he would have had full opportunity to determine his rights and make objection, had he desired to do so. But for Mr. V.'s statement there is no evidence to corroborate the allegation of duress over the tenants to agree to the rent increase. Such a bare statement made by a party with a direct interest and in the face of the landlord's denial is not sufficient proof and so I dismiss this item of the claim.

It appears that the landlord is actually holding \$525.00 as a security deposit. She only has authority under the tenancy agreement to hold \$500.0. The tenants are entitled to recover \$25.00 of that deposit.

As well, it appears the landlord continues to hold a \$100.00 "Hydro" deposit. Such a deposit is not one authorized by the *Residential Tenancy Act* and the tenants (or perhaps just Mr. V.) are entitled to have it back.

Conclusion

The tenants are entitled to recover \$125.00 from the landlord. I award them \$25.00 of the \$50.00 filing fee for a total award of \$150.00. I authorize the tenants to reduce their next rent due by \$150.00 in full satisfaction of this award.

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: March 11, 2014

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Residential Tenancy Branch

