



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions. At the outset of the hearing the Tenant withdrew the claim in relation to utilities as this was made in error.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on August 1, 2006 and ended on May 31, 2014 following the Landlord’s service of a two month notice to end tenancy for landlord’s use (the “Notice”). The reason stated on the Notice is that the rental unit would be occupied by the landlord or the landlord’s close family member. The effective date of the Notice was June 30, 2014. The Tenants were given \$790.00 as the one month rent equivalency and the security deposit was returned to the Tenants in full. The unit was sold in October 2015.

The Tenants state that the Landlord told them that their son was going to move into the unit but that this did not occur. The Tenants state that the unit, a double wide trailer,

was left unoccupied and had been listed for sale. The Tenant states that the Landlord also offered the Tenant the opportunity to purchase the unit. The Tenant claims \$1,580.00 (790x2).

The Landlord states that it was the son's intention to move into the unit but that it was not habitable when left by the Tenants, that the sons had allergies and could not live in the unit due to a previous flood in the unit and that the repairs to the unit were too costly to make. The Landlord confirms that the unit was sold in October 2014. The Landlord states that the son did move onto the property and lived in a trailer.

The Tenant states that the Landlord raised their rent by \$35.00 per month from January 1, 2012 until the end of the tenancy. The Tenant said they were given the choice of either paying the increased amount or moving out of the unit. The Tenant states that no notice of rent increase was ever given to the Tenants. The Landlord states that he only discovered in 2012 that the Tenants were to be paying for the water utility but that they had not. The Landlord states that the water bill was hidden in the Landlord's taxes and that it took some time to figure out that the Tenants were not paying for the water. The Landlord states that in a previous application the Landlord claimed unpaid utilities including the water utility. It is noted that this previous Decision, dated September 9, 2014, finds the Landlord entitled to unpaid utilities and provides a monetary award for the amount claimed. It is also noted that the Decision allows the Tenant to withdraw its application claiming an illegal rent increase. The Tenant claims return of the overpaid rent in the amount of \$980.00.

It is noted that the Tenant's application included a claim for \$525.00 noted as #RTB-7 form. The Landlord indicates in his submissions that he has no idea what this claim is in relation to and at the hearing the Tenant provided no evidence in relation to this claim.

### Analysis

Section 51 of the Act provides that where a landlord ends a tenancy for landlord's use of property and the rental unit is not used for the purpose stated on the notice for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant double the monthly rent payable under the tenancy agreement. Although the Landlord states that the unit was unliveable, the Landlord provided no evidence to support this assertion. Regardless the Landlord did not serve the notice to end tenancy for the reason being that the unit would be demolished or was sold. The reason stated in the Notice was that the Landlord's family would occupy the unit and there is no dispute that the son was to live in the unit. Accepting the undisputed evidence of the Landlord that the unit was sold in October 2014, approximately four months after the effective date of the Notice, I find that the Tenant has substantiated that the Landlord did not act in accordance with the Notice and that the Landlord must pay the tenant double the monthly rent payable under the tenancy agreement in the amount of **\$1,580.00** (790.00 x 2).

Section 41 of the Act provides that a landlord must not increase the rent except in accordance with the Act. Section 42 of the Act provides that a landlord must serve a notice to increase rent in the approved form. Given the undisputed evidence that no notice of rent increase was ever provided to the Tenants and that the rent was increased by \$35.00 per month, I find that the Tenants have substantiated that that the rent must not have increased \$35.00. I also consider the Landlord's evidence that the Landlord was provided a monetary award for the utilities that included the water. I find that the Tenants are therefore entitled to compensation of the overpaid rent in the amount of **\$980.00**.

Section 59 of the Act requires that an applicant must provide full particulars of a claim being disputed. As the Tenant provided no understandable particulars with its application and claim for \$525.00, I dismiss this claim.

As the Tenant's application has met with substantial success, I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$2,610.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,610.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: May 15, 2015

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Residential Tenancy Branch

