



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC, FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied to dispute an additional rent increase, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation, an order disallowing a rent increase, and to recovery of the filing fee paid for this application?

### Background and Evidence

I heard evidence that indicated the tenancy initially began in October 2011 and ended at the end of October 2014. The tenant paid a security deposit of \$625.00 in September 2011. The evidence obtained at the hearing showed that the parties entered into a series of tenancy agreements, starting at the beginning of the tenancy, and on a yearly basis for the next two years. Additionally, a 1 month, fixed term agreement was shown to be agreed upon for October 2014.

The rental unit is located in a condominium building.

The tenant's monetary claim is \$1900.00, described as of \$600.00 for compensation for a rental increase and \$1300.00 in compensation for loss of quiet enjoyment, stress/illness, and time away from work.

The tenant's documentary evidence in support of her application was a letter from the resident caretaker of the residential property, a letter from a manager at the tenant's place of employment, and a letter from the tenant's father, containing an email from one of the listed landlords, "PC".

The landlord's relevant responsive documentary evidence was a copy of a written tenancy agreement dated September 13, 2013. It must be noted that the written tenancy agreement supplied by the landlord shows a fixed term tenancy for October 1, 2013, through September 30, 2014, with the requirement that the tenant must vacate at the end of the fixed term and a monthly rent of \$1300.00, signed by both parties. That requirement was initialed by the landlord and the tenant.

In support of her application, the tenant submitted that her rent was increased from \$1250.00 to \$1300.00 for the last year of the tenancy. During the hearing, in reviewing the written tenancy agreement submitted by the landlord showing monthly rent was \$1300.00, beginning October 1, 2013, the tenant stated that she was not provided a copy of the signed agreement from the landlord and could not speak to documents she had not received. The tenant submits she is entitled to be compensated for the amount of the overpayment over the last year of the tenancy, or \$50.00 per month.

The tenant submitted further that she was illegally evicted by the landlord when the landlord had sent an email to her father in September 2014, informing her father, who was listed as an emergency contact for the tenant on the tenancy agreement, that the tenant would have to move at the end of September 2014.

The sudden eviction caused her emotional distress, time off work, and to scramble for an alternate accommodation on short notice, according to the tenant. The tenant described her state as “frantic”.

In response to my question, the tenant would not confirm that her signature was on the written tenancy agreement supplied by the landlord, as she had not received her copy.

The tenant’s agent submitted a landlord may not enforce a fixed term if the tenant does not receive a copy of the document, and that the short notice to vacate by September 30, 2014, should entitle the tenant to compensation equivalent to having received a 2 Month Notice to End Tenancy for Landlord’s Use of the Property, or 1 month’s rent.

The parties agreed that the landlord and tenant entered into a 1 month, fixed term tenancy for the month of October 2014, requiring the tenant to vacate.

When asked about the landlord’s evidence, the written tenancy agreement, the tenant confirmed that it was possible she initialed the term requiring her to vacate on September 30, 2014, but was not aware of its meaning as she just signed where she was told to sign.

*Cross-examination of the tenant by the landlord’s legal counsel-*

The tenant confirmed all communication with the landlord/owner was through PC.

When asked about signing the two other tenancy agreements, the tenant submitted that she could not speak to the documents she had not received, stating that she had not received a copy of the second or third tenancy agreement. The tenant submitted further that she trusted PC and never asked about acquiring a copy of the tenancy agreements.

When asked about signing the first 2 tenancy agreements as to whether she was aware that they had a clause requiring the tenant to vacate at the end of the fixed term, the tenant submitted that she assumed the lease would be renewed at the end of the 2<sup>nd</sup> year as in the past.

*Examination of PC by the landlord’s legal counsel-*

PC stated that her role was as a concierge/employee with the strata building and in that role, delivered documents to the tenant on behalf of the owner of the rental unit. PC stated that as to the written tenancy agreements in this matter, she would have the tenant sign the document and then send it to the owner, who would sign and return the

tenant's copy. PC said that as to the last written tenancy agreement in question, she put the tenancy agreement in an envelope and slipped the document under the tenant's door, as she has all the prior tenancy agreements, due to their differences in work schedules.

PC submitted that the tenant signed the written tenancy agreement in question.

PC said she received an email from the tenant in June 2014, asking whether there would be a rent increase when the tenancy ended in September.

#### *Tenant's rebuttal-*

Through her agent, the tenant submitted that the only written tenancy agreement the tenant ever received was the first one, signed in 2011, and that a tenancy agreement cannot be enforced if a copy is not properly delivered.

In response to my question, the tenant confirmed receiving the 2011 tenancy agreement when it was placed under her door.

#### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, both as required under section 67 of the Act. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

In this case, I find the tenant's claim centers on the terms of the tenancy agreement between the parties for the final year of the tenancy. When reviewing the written tenancy agreement, the monthly rent listed was \$1300.00, beginning October 1, 2013, for a fixed term through September 30, 2014, with a requirement that the tenant vacate the rental unit on that date. The tenancy agreement was signed by the tenant and the landlord.

When asked about the written tenancy agreement submitted by the landlord into evidence, the tenant was non-responsive, repeatedly saying she could not speak to a document she had not received, apparently referring to at the time of signing on September 13, 2013, as she confirmed receiving the landlord's evidence. I found her repeated use of that particular phrase to answer questions about the document to be

evasive and rehearsed. The tenant failed to convince me that she had not received a copy of the written tenancy agreement after she had signed the document, and even if that were the case, the tenant's remedy would be to file an application for dispute resolution seeking the landlord's compliance with section 13(3) of the Act at that time, not when the landlord had informed the tenant that she had to vacate the rental unit at the end of the fixed term. With the tenant's failure to do so, I find she has not complied with her requirement under section 7(2) of the Act to take reasonable measures to minimize her loss at the time of occurrence. I also find the tenant has not submitted a basis in law to support her argument that the written tenancy agreement was invalid due to allegedly not having received her copy of the agreement.

As to the terms of the tenancy agreement for the final year of the tenancy, the evidence shows that the tenant paid rent of \$1300.00 per month, the monthly rent listed on the agreement, without any concern or issue raised by the tenant to the landlord about an illegal rent increase. I also could not determine that monthly rent was ever \$1250.00, as suggested by the claim of an overpayment of \$50.00 per month, as the tenant failed to submit a copy of the first written tenancy agreement she did acknowledge receiving.

If there was an issue or protest with the amount she was paying because she claimed she had not received the agreement, the tenant failed to show proof that concern was raised with the landlord. This leads me to conclude that the tenant was aware of the terms of the tenancy agreement. A tenant is not obligated to pay rent which has been illegally increased in violation of section 42 of the Act. If the tenant believed that she was paying rent which had been illegally increased, her remedy would be to file an application for dispute resolution at the time of occurrence, or in this case, October 1, 2013, not pay monthly rent for a year prior to bringing this issue forth at the end of the tenancy.

I therefore find the tenant has submitted insufficient evidence to show that she received a notice of a rent increase from the landlord, that her rent was illegally increased or that she took any steps to minimize her loss. Rather, I find the tenant paid the amount she agreed upon when she signed the tenancy agreement. Her claim for \$600.00 for an illegal rent increase is therefore dismissed.

As to the tenant's claim for loss of quiet enjoyment, stress and illness, and time away from work due to the landlord's notice that she vacate, section 44 of the Act provides for ways a tenancy may end, with subsection (1)(b) stating that one way a tenancy ends is when the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Therefore, pursuant to the terms of the written tenancy agreement, this tenancy ended on September 30, 2014, and the tenant was required to vacate the rental unit on that date, even without advanced notice from the landlord. The tenant had been signing a new tenancy agreement on a yearly basis, which leads me to the conclusion she was aware that the fixed term in the tenancy agreement ended the tenancy each year. It is upon the tenant to read and understand documents she signs.

I find the landlord enforced the terms of the written tenancy agreement requiring the tenant to vacate the rental unit at the end of the fixed term and as such, I find the tenant has not presented any evidence that the landlord has violated the Act, the Regulations, or the tenancy agreement. I therefore find she cannot support her claim for damage or loss under section 67 of the Act and her claim for \$1300.00 is dismissed.

Due to the above, the tenant's application, including her request for recovery of the filing fee, is dismissed, without leave to reapply.

### Conclusion

For the reasons given herein, the tenant's application is 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: May 7, 2015

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Residential Tenancy Branch

