



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, 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 marked on her application that she is requesting a return of her security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application. The tenant confirmed at the hearing that her security deposit was not at issue.

The tenant and the landlord's agent (hereafter "landlord") 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 not sent in any documentary evidence, other than the tenant's two pages of evidence filed with her application.

Thereafter both participants 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 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 and to recovery of the filing fee paid for this application?

### Background and Evidence

The tenant submitted that this tenancy started in 2000 and ended at the end of September 2014.

The tenant's monetary claim is \$1388.00, for alleged overpayment of rent due to illegal rent increases during the tenancy.

In support of her application, the tenant submitted that her monthly rent was \$850.00 from 2000 through 2004 and that beginning in 2004, her monthly rent was increased to \$900.00, in excess of the allowed rent increase, as her monthly rent should have been \$889.00. The tenant submitted further that in each subsequent year, due to the initial incorrect increase, her yearly rent increase was excessive, leading to an overpayment each month.

The tenant's documentary evidence was 2 pages of handwritten calculations showing a breakdown of alleged overpayments from 2004, what the rent should have been, and the alleged differences.

I note that the tenant's total amount of alleged overpayments on her handwritten calculations shows \$932.34 and there was no explanation provided as to that amount and the amount of her monetary claim listed on her application.

In response to my question, the tenant submitted that she did have a copy of a written tenancy agreement, the notices of rent increases issued by the landlord, and proof of her payments, but agreed that none of this information was submitted for this hearing. The tenant explained that she did not want to release her personal banking information.

In response to my question, the tenant submitted that she paid the rent increases since 2004 without seeking remedy as she did not investigate her rights until another dispute resolution hearing between the parties earlier this year.

### *Landlord's response-*

The landlord submitted that she did not have access to the documents from the beginning of this tenancy as the original landlord was a different company and that company would not release the records.

The landlord submitted further that the original tenancy agreement was a fixed term agreement and in 2004 when the new legislation, rules and regulations came into effect,

the parties signed a month-to-month tenancy agreement, showing a monthly rent of \$900.00 per month. The landlord submitted further that all subsequent notices of rent increase conformed with the allowed amounts and actually show that the rent was not increased as much as allowed.

In response, the tenant denied signing a new tenancy agreement in 2004.

### 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 results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the tenant has the burden of proof to substantiate their claim on a balance of probabilities.

In the case before me, I find the tenant submitted insufficient evidence to support her application. The tenant referred to documentary evidence of which she had possession and which would help in proving her claim, but failed to submit this evidence.

The tenant submitted that the illegal rent increases began in 2004 and the landlord submitted that the parties signed a written tenancy agreement showing a monthly rent of \$900.00.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof, in this case, the tenant, cannot prevail on the balance of probabilities.

As I find that disputed oral evidence does not sufficiently meet the bearer's burden of proof, I find the tenant submitted insufficient evidence that the landlord failed to comply with the Act.

I also find that the tenant failed to minimize her loss, as she waited over 10 years to apply for dispute resolution when the first alleged infraction occurred.

As I have found that the tenant submitted insufficient evidence to support her claim and that she has failed to take reasonable steps to minimize her loss, I dismiss the tenant's application, without leave to reapply.

As I have dismissed the tenant's application, I decline to award her recovery of the filing fee paid for this application.

Conclusion

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: September 12, 2015

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Residential Tenancy Branch

