



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR CNR OPR DRI OLC MNSD MNDC FF

### **Introduction:**

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated September 4, 2015 to be effective September 19, 2015 but the landlord said she served her Application for Dispute Resolution by registered mail to the disputed address and it was returned as the tenants had vacated. She acknowledged service of the tenant's Application. I find the tenant is deemed to be served with her Application pursuant to section 90 of the Act.

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent and damages;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) To dispute an illegal rent increase contrary to section 43;
- g) To order the landlord to comply with the Act; and
- h) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

The tenant vacated the unit on September 30, 2015 or October 1, 2015 so an Order of Possession is no longer in issue. The remaining issues are if the landlord proved on the balance of probabilities that the tenant owes rent and in what amount and if they damaged the property beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Other issues are if there was an illegal rent increase and if so, is the tenant entitled to a refund of overpaid rent and to the return of their security deposit and to recover filing fees for the application?

**Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in June 1, 2014, that rent was \$950 a month and a security deposit of \$475 and a pet damage deposit of \$237.50 was paid. The landlord said that rent was short in February 2015 as the tenant paid only \$700. When she contacted them, the female tenant said the male tenant had left and she deposited an extra \$350 (\$250 for the rent shortfall and \$50 late charge and \$50 NSF charge). Then the next day, the tenant called and said she wanted to stay until March 31, 2015 and her Mom would help with the rent. The landlord said that would be fine and scheduled a move out inspection for the middle of March. However when she went to the home, the male tenant had returned and the couple wanted to continue the tenancy. Meanwhile the landlord had advertised the unit for \$1100 in rent so she agreed to continue the tenancy if the tenants paid an additional \$100 monthly rent (\$1050).

The tenants said they had agreed to pay a rent increase but thought it would be done legally with an advance written notice of rent increase. However, they did not want to be evicted and did not know their rights so they paid an additional \$100 a month from April until August 2015 (5 months). They found out that the landlord had acted illegally in raising their rent before one year of tenancy and in an illegal amount so they paid only \$950 in September 2015 and the landlord served them a ten day notice for unpaid rent of \$100. They disputed the Notice on September 9, 2015.

The landlord also requests to keep the security and pet damage deposits for damages to the home. However she sent in no evidence to support her damage claim as she realized she was unable to serve the tenant with evidence because of lack of a forwarding address. She said she texted them many times and they had agreed to do a move-out inspection on October 10, 2015 but never showed up.

After I advised the parties of the provisions of section 38 of the Act regarding the necessity of a forwarding address in writing, the tenants supplied a forwarding address and the landlord agreed to accept this as formal notice that she must either return the deposits or file an Application to claim against them. I advised the parties that the landlord would have until Monday, **November 30, 2015** (the 15<sup>th</sup> day fell on a weekend)

to return the deposits or file the Application with the necessary evidence to prove her claim.

In evidence is the 10 day Notice to End Tenancy for unpaid rent, statements of the parties and the tenancy agreement.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

An Order of Possession is no longer in issue.

#### Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord imposed an illegal rent increase contrary to sections 42 and 43 of the Act. The tenancy had only existed for 8 months when she proposed a \$100 increase monthly, it was in excess of the percentage allowed in section 43 of the Act and she did not provide a three month written notice of an increase.

The landlord said she acted on the belief that the female tenant had ended the tenancy in February and she had advertised the unit for rent at \$1100. She believed this was a new tenancy and she was entitled to charge the higher rent. However section 44 provides how a tenancy ends. A Notice must be in writing even if the parties mutually agree to end the tenancy. I find their tenancy agreement in section 17 also specifies that Notices must be in writing. I find insufficient evidence of termination of the tenancy in February 2015 so I find the tenancy continued and sections 42 and 43 of the Act regarding increases of rent applied, that is none for the first year and three months notice for any legal increase afterwards. I find the addendum in their tenancy agreement also specified that any increase would be based on two months notice. Therefore, I find the rent increase of \$100 a month was illegal and pursuant to section 43(5) of the Act the tenant is entitled to deduct it from rent or obtain a refund of it. I find the tenant entitled to recover \$500.

I also find the tenant was overcharged late and NSF fees. Residential Tenancy Regulation 7 provides for a maximum of \$25 for each fee and only if provision for such charges is provided in the lease. I find section 4 of the lease did contain provisions for late and NSF fees so I find the landlord was entitled to \$50 total for February 2015. Although the tenant contended that they paid the balance of the rent within a day and the lease allowed them a week before the charge of fees, I find they supplied insufficient evidence of exactly when the balance was paid. I find the landlord entitled to the late

and NSF fees in accordance with Regulation 7 and the tenant entitled to a refund of \$50 for the overpayment in February.

In respect to the landlord's claim for October's rent, I find she gave them a Notice to End Tenancy for refusing to pay the illegal rent increase in September but they had paid the \$950 for rent in full in September 2015. The tenants state they left September 30, 2015 pursuant to her Notice to End Tenancy. The onus of proof is on the landlord to prove on a balance of probabilities that they stayed into October. I find insufficient evidence to support her statement that they did not leave until October 1, 2015. Therefore, I find her not entitled to recover over holding rent for October, 2015.

In respect to the landlord's claim for damages, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the landlord stated in the hearing, I find she did not provide sufficient proof of damages for the hearing or to the tenant as she had no forwarding address for the tenant. I advised her in the hearing to assemble her evidence and submit another application for any damage claim. The security and pet damage deposits remain in trust to be dealt with in accordance with section 38 of the *Act*. I give the landlord leave to reapply for compensation for damages and any loss of rent related to those damages.

**Conclusion:**

I find the tenants entitled to a monetary order as calculated below and to recover their filing fee for this application.

I dismiss the application of the landlord without recovery of the filing fee due to lack of success. I give her leave to reapply for compensation for damages and any provable loss of rent related to the damages.

Calculation of Monetary Award:

Overpaid rent due to illegal increase -5 months	500.00
Overcharged and paid illegal late and NSF fees	50.00
Filing fee for this application	50.00
Total Monetary award to tenant	600.00

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 12, 2015

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Residential Tenancy Branch

