



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC, FF

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking to dispute an additional rent increase, for a monetary order for compensation under the *Residential Tenancy Act* (the "Act") or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Did the Landlord charge an illegal rent increase?

Are the Tenants entitled to monetary compensation?

### Background and Evidence

The female Tenant and the male Tenant were planning on moving into a two bedroom rental unit. At the outset the female Tenant was living in a rental unit operated by this Landlord. The male Tenant was living in a different rental unit. There was no evidence as to the male Tenant's previous tenancy provided.

The female Tenant saw an ad for a two bedroom rental unit and arranged with an Agent for the Landlord to view the subject rental unit on May 19, 2015. During the viewing the Agent for the Landlord (who was not the Agent who appeared at this hearing), informed the Tenants that the rent for the subject two bedroom unit was \$1,650.00.

On May 20, 2015, the Tenants made an application with the Landlord to rent the subject rental unit.

The testimony of the Tenant was that on May 22, 2015, this Agent informed them that he had made a mistake on the actual rental amount for the subject rental unit. He informed the Tenants that the rent was actually \$1,850.00 for the subject rental unit. The Tenant also submitted that she had a voice message from this Agent on May 22<sup>nd</sup>, confirming the price at \$1,650.00.

According to the evidence submitted by the Tenants the Agent informed the Tenants on May 22<sup>nd</sup>, (which was a Friday), that they could take the weekend to think about the subject rental unit at the rate of \$1,850.00. The Agent apologized for the confusion.

On May 23, 2015, the female Tenant wrote the Agent an email saying she was not happy with the situation. She explained she had already put the security deposit calculated for the rent amount of \$1,650.00, along with her Notice to End Tenancy which was dated May 23<sup>rd</sup>, and her banking information for the automatic payment withdrawal, in an envelope and deposited it in the office mailbox of the Landlord. The Tenant also writes that she will get an increased amount for the security deposit on Monday and provide it to the Landlord on May 25<sup>th</sup> (a Monday). In evidence are receipts for the security deposits paid by postal money dated May 23<sup>rd</sup> and May 25<sup>th</sup>.

On May 28, 2015, both Tenants signed the tenancy agreement which was for \$1,850.00 in rent.

On June 26, 2015, the Tenants wrote the Landlord and requested they remedy the situation by providing the subject rental unit at \$1,650.00.

The Tenants argue that they had a verbal tenancy agreement with the Landlord to supply the subject rental unit at the monthly rate of \$1,650.00. The Tenants argue they signed the tenancy agreement on May 28, 2015, as they were under duress. According to the testimony of the female Tenant, they had both submitted their separate Notices to End tenancy to their respective landlords already and with the housing market in the area where they live, they would not have been able to find an alternate rental unit. The

Tenant testified that they felt they had no option but to go forward. The Tenant testified that they are both older and moving is an arduous task.

The Tenant further testified that the male Tenant had to end his tenancy and it was a, "... complicated and expensive situation for him to give notice and it could not be revoked." However, I note that no other evidence on this allegation was submitted in evidence.

In reply to the Tenants' claims, the Agent for the Landlord who appeared at the hearing testified that the Tenants were given a fair amount of time to consider the subject rental unit at the price of \$1,850.00. He testified that the Landlord had accepted the female Tenant's Notice to End Tenancy on short notice, as the female Tenant was breaking a fixed term lease which was to run to July 31, 2015.

The Agent testified that the Tenants were aware of the actual rent of the subject rental unit prior to increasing the security deposit, prior to signing the lease and prior to providing any rent cheques.

The Agent testified that the female Tenant's old rental unit had not been rented out and the Tenants could have stayed there. The Agent testified and submitted evidence that they provided the Tenants with several options on June 29<sup>th</sup>, in reply to the Tenants' letter of June 26<sup>th</sup>. These included ending the tenancy without penalty, increasing the move in allowance provided, and transferring to a different two bedroom unit at a lower rate of rent.

The Agent argued that the Tenants knew what they were signing and that all the figures in the lease were clearly written. The Agent submitted that the Tenants signed the agreement knowing what terms they were signing for and agreeing to.

### Analysis

A party that makes an application against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

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.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Application of the Tenants must be dismissed without leave to reapply.

I do not find the parties entered into an oral tenancy agreement, establishing the rent at a lower amount. While the Tenants made an application to the Landlord to rent the subject rental unit based on an incorrect amount of rent, the parties always intended to enter into a written tenancy agreement. In other words, the parties each knew there was a written tenancy agreement that needed to be signed in order to conclude the rental arrangement. The female Tenant had a previous written agreement with the same Landlord and there was insufficient evidence from the Tenants that they never intended to sign a lease, but only wished to enter into an oral agreement with the Landlord. I also find it unlikely the Landlord would have continued with an oral agreement when it is clear they use written tenancy agreements as required under the *Act*.

Once the Agent for the Landlord clarified the actual amount of rent for the subject rental unit the Tenants were allowed to think it over at least for a weekend. In fact, the Tenants had from May 22 to May 28 to determine if they wanted to proceed with renting the subject rental unit. Ultimately they agreed to the correct rent in writing.

The Tenants cannot argue they had an oral agreement for different rent and terms, when they have signed a written agreement setting out the rent and other terms.

I do not find the Tenants were under duress when they signed the agreement. The definition of duress is:

“... subjecting a person to improper pressure which overcomes his will and coerces him to comply with a demand to which he would not yield if acting as a free agent.” ***Black’s Law Dictionary***, St. Paul, Minn. West Publishing Co.

I find the Tenants were not subjected to improper pressure nor did they have their free will overcome. They may have felt pressure to take the rental unit due to the circumstances they had placed themselves in; that is, by giving notice to end their current tenancies. However, in ending her previous tenancy the female Tenant was breaching the terms of a fixed term lease she already had with the Landlord. I note there was insufficient evidence regarding the male Tenant and the ending of his previous tenancy, as to when he gave Notice or the circumstances under which he did so.

I find the Landlord gave the Tenants ample opportunity to consider the lease at the actual rate of rent. Ultimately the Tenants agreed to this rate of rent of their own free will.

I also accept the testimony of the Agent for the Landlord that they would have allowed the tenancy of the female Tenant to continue in her previous rental unit and would have waived her Notice to End Tenancy.

Therefore, I do not find the parties had an oral tenancy agreement, nor did the Landlord illegally increase the rate of rent. I find the Tenants have failed to prove the Landlord breached the Act and that they are entitled to monetary compensation.

For all of these reasons, I dismiss the Tenants’ Application without leave to reapply.

Conclusion

The Tenants have failed to prove they signed the written tenancy agreement under duress caused by the Landlord or their Agents. The Tenants have failed to prove there was an oral tenancy agreement or an illegal rent increase. The Tenants have failed to prove the Landlord breached the Act or their tenancy agreement, or that the Tenants are entitled to monetary compensation.

Therefore, the Tenants' 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: November 30, 2015

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Residential Tenancy Branch

