



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; return of their security deposit; recovery of a rental increase paid over the course of the tenancy; as well as a request for a rent reduction.

Both parties attended this hearing. Two of the tenants were present and represented by legal counsel. The landlord attended this hearing as did the property manager and agent. The landlord confirmed receipt of the tenant's Application for Dispute resolution package with evidentiary materials and the Notice of Hearing .

### Issue(s) to be Decided

Are the tenants entitled to a monetary order to encompass;

A rent increase; and/or

A lack of services, facilities (particularly water pressure and temperature) during the tenancy; and/or

Return of their security deposit and an amount equivalent to their deposit as a result of the landlord's failure to comply with the *Act*?

### Background and Evidence

This tenancy began on July 1, 2012 as a one year fixed term. The tenancy agreement was submitted by the tenants as evidence for this hearing. The tenancy agreement indicates a monthly rental amount of \$1200.00 payable on the first of each month. After June 30, 2013, the tenancy continued on a month to month basis. Both parties agreed that, as of August 1, 2013, the tenants paid \$1500.00 on the first of each month.

The landlord testified that the rent was increased, with the agreement of the tenants and in accordance with his understanding of the *Act*. He testified that the number of occupants in the rental unit had increased and therefore there was an agreement between the parties to increase the rental amount for the unit.

The tenant AB testified that the rental increase was a 'surprise' but that the tenants all felt pressure to pay it or have their tenancy end. She testified that she believes now that the increase was "illegal" but, at the time, all tenants agreed to pay the increased amount. The rental amount of \$1500.00 per month was paid from August 1, 2013 to the end of this tenancy January 31, 2015. While the landlord does not dispute the rental increase, the tenant did not submit any receipts or documentation referring to the increase or the payment of the rent.

The tenants' counsel submitted that the increase in rent from \$1200.00 to \$1500.00 on August 1, 2013 was "wrong and unconscionable". The tenants sought to recover the \$300.00 additional paid each month from August 1, 2013 to the end of the tenancy on January 31, 2015, a total of 17 months and \$5100.00.

The tenants sought to recover the \$600.00 security deposit that they paid to the landlord on June 13, 2012. The tenants testified that they gave notice to end the tenancy on January 1, 2015 and that they vacated the residence on January 31, 2015. The tenants both testified that, at the time of giving notice to end the tenancy and when they vacated the residence, they provided their forwarding address to the landlord.

The landlord testified that the tenants did not give a month's notice to end their tenancy in accordance with the *Act*. The landlord provided undisputed sworn testimony that the security deposit was returned to the tenants prior to the date of this hearing. The tenants confirmed that the landlord had mailed a cheque in the amount of their security deposit.

The tenants both testified that, about four months prior to moving out, the water pressure became weak and there was very little hot water in the rental unit. Tenant AB testified that if one tenant took a shower, water pressure in another area would be very weak. The tenants testified that, when they complained, the pressure and temperature of the water would seem to improve but then, after time, it would reduce in pressure and temperature again.

The tenants testified that any complaints they made during the course of the tenancy were made by attending to the landlord's residence and speaking to the son of the

landlord who is not an adult (he is in high school). They did not speak to the landlord directly.

### Analysis

In accordance with section 44 of the *Act*, a tenancy ends when the tenant or landlord gives notice to end the tenancy in compliance with the form, content and timeline provisions of the *Act*. Section 45(1) provides that,

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* requires that any notice to end tenancy be given in writing, signed and dated by the party giving notice, provide the address of the rental unit and state the effective date of the notice.

In this case, the undisputed evidence is that the tenant did not provide written notice to end the tenancy to the landlord. In testimony, the landlord acknowledged that the tenant provided notice to end the tenancy. Both parties agreed that the notice was provided on January 1, 2015. As section 45 of the *Act* requires notice to be given prior to the day in the month when rent is payable and at least one full month in advance, the tenant failed to strictly meet the notice requirements of the *Act*.

The *Act* also requires that a landlord mitigate his loss in circumstances of insufficient notice to end the tenancy, if he seeks compensation for the lack of notice. The landlord received notice on the 1<sup>st</sup> of the month that the unit would be vacant by the 31<sup>st</sup> and therefore had 30 days to take steps to rent out the unit. The landlord did not seek compensation for any lack of notice.

The landlord provided undisputed evidence that the \$600.00 security deposit was in fact returned to the tenants. A copy of the cheque was submitted and the letter attached to it. The tenants acknowledged in their testimony that they had not provided written notice or a forwarding address. They believed that information provided verbally or through the landlord's under-age son was sufficient as notice. It is not sufficient notice of a

forwarding address until it is formalized in writing. It is certainly not sufficient notice to provide information with respect to a tenancy to the landlord's child.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the evidence is that the tenant did not provide a forwarding address in writing. Therefore the landlord's obligations to return it had not yet been triggered.

Based on the undisputed evidence before me, I find that the landlord was compliant with the *Act* in returning the \$600.00 security deposit and I find that the tenants are not entitled to any further compensation as the landlord has complied with the *Act*.

The tenants also sought compensation at \$300.00 per month from August 1, 2013 for what their counsel described as an unconscionable increase in the rent. The tenants claims that he had no choice but to pay the rent increase. If a tenant is dissatisfied with a rent increase that goes beyond the bounds of the annual allowable increase under the *Act*, a tenant may make an Application for Dispute Resolution to the Residential Tenancy Branch. However, in this case, the tenants continued to pay this rental amount, an amount both parties described as "mutually agreed" at the time, for two years.

The tenants sought compensation in the form of a rent reduction in that the tenants claim that the water pressure in their residence was weak and the hot water was limited in some fashion in the last four months of their tenancy. The tenants provided a description of this issue but provided no evidence that they had identified this issue to the landlord and allowed the landlord time to make the appropriate investigations in repair. The water pressure and temperature issue is simply raised, much like the rent increase issue, after the tenancy has ended.

In seeking a rent reduction or monetary award, the person claiming loss or damage bears the burden of proof. The claimant, the tenants must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord in this case. Once that has been established, the tenants must then provide evidence that can verify the actual monetary or other verifiable loss or damage. I find that the tenants have provided insufficient evidence to justify a backdated rent reduction for this alleged water issue.

On all of the claims brought by the tenants, I find that the tenants have provided insufficient proof of their claims. I dismiss the tenants' claim in its entirety. Given that the

tenants have been unsuccessful in their application, I find they are not entitled to recover their filing fee.

Conclusion

I dismiss the tenants' application for a monetary award in its entirety 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: December 14, 2015

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Residential Tenancy Branch

