



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 67 minutes in order to allow both parties to fully present their submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application and the tenant was duly served with the landlords' written evidence.

I advised the tenant that I had not received her written evidence package. The tenant confirmed that she submitted the first page of the tenancy agreement and two pages of an online banking statement. The landlords confirmed that they received this evidence from the tenant. Accordingly, I allowed the tenant to submit this evidence to me after the hearing by way of facsimile. The tenant only faxed the online banking statement of two pages, not the first page of the tenancy agreement. I considered the tenant's two-page online banking statement prior to writing this decision.

### Issues to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this Application from the landlords?

### Background and Evidence

Both parties agreed that this tenancy began on January 28, 2013. The tenant stated that she vacated the rental unit on January 30, 2015, while the landlords said it was on January 22, 2015. Monthly rent in the amount of \$900.00 was payable on the first day of each month. The landlords claimed that the tenant paid a security deposit of \$500.00, while the tenant claimed that she paid a total of \$900.00. Both parties agreed that the landlords returned \$500.00 from the security deposit to the tenant. The tenant claimed that she was not seeking the additional \$400.00 that she claims to have paid by cash for the security deposit, from the landlords at this hearing.

Both parties agreed a written tenancy agreement was signed by both parties. The tenant claims that pages 1 and 3 of the five-page tenancy agreement were fabricated by the landlords. The landlords provided a full copy of the tenancy agreement while the tenant did not provide a copy at all.

The tenant seeks a monetary order of \$3,211.00 for payments made to the landlords for guests staying overnight at her rental unit. The tenant also seeks to recover the \$50.00 filing fee paid for her Application.

Both parties agreed that the tenant made extra payments in addition to her rent of \$900.00 monthly, to account for guests staying at her rental unit during this tenancy. The tenant stated that a provision was added by the landlords in the tenancy agreement, indicating that the tenant was required to pay for guests staying overnight. The landlords stated that they added this provision after the tenant insisted she wanted to do so because she would be having guest stay overnight often, while the tenant disputed this fact. Both parties agreed that the landlords did not specifically ask the tenant to pay extra for the guests at the time that she made the extra payments, but the tenant said she paid because she was required to by her tenancy agreement. The landlord provided a full copy of the tenancy agreement which indicates that the tenant will be charged at \$10.00 per day for a guest staying at the unit, not to exceed 90 days in a one-year term.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements, on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 30(1)(b) of the *Act* states the following:

*30 (1) A landlord must not unreasonably restrict access to residential property by (b) a person permitted on the residential property by that tenant.*

Section 5(1) of the *Regulation* states the following:

*Prohibited fees*

*5 (1) A landlord must not charge a guest fee, whether or not the guest stays overnight.*

I find that the overnight guest provision in both parties' tenancy agreement is unenforceable, regardless of which party added it or wanted to add it to the tenancy agreement. The landlords cannot unreasonably restrict the tenant from having guests at the rental unit, as per section 30 of the *Act* as noted above. The landlord cannot charge or accept fees for overnight guests, as per section 5 of the *Regulation*, as noted above. Both parties cannot contract outside of the *Act* by attempting to add this guest provision to their tenancy agreement, as per section 5 of the *Act*. Regardless of whether the landlords asked the tenant for extra payments for guests or the tenant offered it as per the tenancy agreement provision, the landlords still accepted this money despite the fact that it was not rent and it was not due under an enforceable provision of the tenancy agreement.

I had the landlord's written records in front of me during the hearing, which included a chart created by them to track the rent, the overpayment for guests and other amounts the landlords allocated towards movie rentals, cable television packages and a landline phone. I note that the landlords failed to prove that the tenant was required to pay extra for these services or the specific amounts for such services. Accordingly, I do not consider these services as monies owed by the tenant to the landlords. I have only considered the overpayment for overnight guests, that both parties agreed the tenant paid for most of her tenancy, in my decision.

I note that I did not have the tenant's online banking statement in front of me during the hearing. However, the tenant provided testimony about the extra payments she made for overnight guests. The tenant did not reference her online banking statement during her testimony, as she testified only that she paid an extra \$300.00 for overnight guests for each of March and April 2013 and an extra \$100.00 per month from May 1, 2013 to December 31, 2014. The total overpayment claimed by the tenant was \$2,600.00 not the \$3,211.00 claimed for in her application. However, after receiving the tenant's online banking statement, the tenant's testimony did not match up with the records.

I found that the tenant's testimony and records were unclear with respect to her claim. As it is the tenant's burden of proof to show the extra payments made to the landlords, and as she only produced an online banking printout rather than official banking records certified by a banking representative, I do not accept her printout as a fully accurate account for all the payments she claims to have made, particularly as her testimony was different than what the records indicate. I rely instead on the landlord's records, which closely reflected the tenant's records but were different in some respects, as noted below. I was left to sift through both parties' records in order to make my decision, rather than being presented with clear testimony and accurate records from both parties, particularly the tenant, as it is her claim. Both parties had different dates of rental payments as well as some different amounts, which I was left to reconcile. I compared the tenant's records against the landlords' records and for the majority of months, the calculations for payments made by the tenant to the landlords are the same. The landlords' records are dated from January 29, 2013 until November 27, 2014 while the tenant's records are from March 8, 2013 to November 27, 2014.

I award the tenant \$2,300.00 total for paying the landlords for overnight guests to stay at her rental unit. I find that the tenant was not required to make these payments as noted above. A breakdown is noted below.

According to the landlord's records, the tenant made payments of \$1,000.00 per month, accounting for an extra \$100.00 each month for overnight guests, for a total of 16 months at \$1,600.00 total.

According to the landlords' records, the tenant paid a total payment of \$1,200.00 per month, accounting for an extra \$300.00 for overnight guests, for a total of 1 month. The tenant testified that she paid a total of \$1,200.00 for two months in March and April 2013, but her own online printout shows that one of the transactions for \$1,200.00 on

March 30, 2013 was cancelled and not deposited. Therefore, the tenant is not entitled to an extra overpayment of \$300.00 for March 30, 2013.

According to both parties' records, the tenant paid a total payment of \$1,050.00 per month, accounting for an extra \$150.00 for overnight guests, for a total of 1 month.

According to both parties' records, the tenant paid a total payment of \$700.00 per month for 1 month and a payment of \$1,350.00 for 1 month, accounting for an extra \$250.00 for overnight guests for the above 2 months.

There are two payments on the tenant's records, in the amounts of \$151.00 on April 12, 2013 and \$160.00 on March 8, 2013, that the landlords did not acknowledge in their own records as having been paid by the tenant. I dismiss the above two payments claimed by the tenant, totalling \$311.00.

The tenant claimed an additional overpayment of \$100.00 for an extra month included in her records but not the landlord's records, and therefore, I dismiss this extra \$100.00 payment claimed by the tenant.

The landlords noted three months of rent payments at \$900.00 per month, where there was no overpayment by the tenant and I accept this.

As the tenant was only partially successful in her Application, I find that she is not entitled to recover the \$50.00 filing fee from the landlords.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,300.00 against the landlords. The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 15, 2016

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Residential Tenancy Branch

