



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF (Tenants' Application)  
                             MNSD (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution they sought a monetary order for money owed or compensation for loss under the Act, Regulation or Tenancy Agreement and to recover the filing fee. The Landlord sought authority to retain the security deposit.

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 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.

### November 18, 2015 hearing

As a result of the November 18, 2015 hearing the Landlord was granted an Order of Possession and a Monetary Order for the sum of \$4,800.00. The presiding Arbitrator also found that the rent increase of June 28, 2014 was of no force and effect having been issued improperly.

### Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. What should happen with the Tenants' security deposit?

3. Should either party recover the filing fee?

Background and Evidence

T.B. testified on behalf of the Tenants. She stated that the tenancy began December 9, 2009 and ended between November 21 and November 28, 2015. A copy of the residential tenancy agreement was introduced in evidence and provided that monthly rent was payable in the amount of \$950.00 per month. She stated that monthly rent was \$1,050.00 at the time the tenancy ended having been raised on June 28, 2014 by the Landlord. T.B. confirmed that the tenancy ended pursuant to an Order of Possession issued on November 18, 2015.

During the hearing, the Tenants stated that they sought the sum of \$3,300.00 representing the amount they claim to have overpaid pursuant to an illegal rent increase.

Introduced in evidence was a copy of the letter from the Landlord dated June 28, 2014 wherein the Landlord informed the Tenants of his intention to increase the rent to \$1,050.00.

These parties attended arbitration on November 18, 2015. In a Decision on the same date the Arbitrator found that the June 28, 2014 rent increase was of “no force and effect” as it does not comply with section 42 of the *Residential Tenancy Act*

In the Decision dated November 18, 2015, the presiding Arbitrator also found that the Tenants had not paid rent for July, August, September, October or November 2015; additionally, noting that the Tenants confirmed they had not paid rent for these months.

Introduced in evidence was a Monetary Order Worksheet wherein the Tenants indicated they sought compensation in the amount of \$700.00 for the months July 1, 2014 to September 2015. At the hearing, the Tenant T.B. confirmed that she believed recovery was limited to \$50.00 per month, and stated that in fact they sought recovery of \$100.00 per month from July 1, 2014 to the September 2015.

Based on the foregoing, the Tenants claim for compensation for rent paid in excess of the allowable amount is limited to the time period July 2014 to June 2015; further, as the illegal rent increase was \$100.00 per month, the Tenants' claim for compensation for related compensation is limited to \$1,200.00.

The Tenants also claimed \$500.00 for increased heating costs, fuel costs, and food costs for the time period February 1-4, 2014 when the Tenants say they were not able to heat their home.

The Tenants also sought compensation in the amount of \$2,100.00 representing two months' rent (\$1,050.00 x 2) in which they claim they suffered "Loss of peace and Quiet Improper 24hr Notices". T.B. testified that this claim relates to the period of time when the rental home was listed for sale from July 10, 2014 during which time the Tenants claim they were frequently disrupted. She stated that during this time, prospective purchasers were peeking in her windows and she had repeated improper notices from realtors. T.B. also claimed that she was in another community with her husband who was on a "working holiday" and she had to leave her vacation early to be home to show the rental.

In support the Tenant provided a detailed journal of the days she claims to have been interrupted by purchasers, realtors and the Landlord. She also provided four different letters from different realtors regarding showings.

In response to the Landlord's claim for monetary compensation from the Tenants for the cost of cleaning the rental and removing the Tenant's garbage, T.B. stated as follows.

T.B. testified that the rental home was filthy when they moved in and was filled with previous' renters belongings. She stated that she believed it was not her responsibility to remove other peoples' garbage.

T.B. admitted that the flowered sofa depicted in one of the Landlord's photos was hers however she denied that any of the other refuse depicted in the photos was the responsibility of the Tenants. She stated that the items depicted were stored in the garage and shed and were in fact the possessions of previous renters. T.B. stated that she never entered the shed during the tenancy.

T.B. denied causing any damage to the rental unit and stated that the condition of the rental as shown in the Landlord's photos was as it was when they moved in. She further stated that the carpet was stained, the walls were covered in writing, and the windows were broken at the time they moved in.

T.B. confirmed that the Landlord did not perform a move in or move out condition inspection report.

The Landlord testified that he did an informal move in inspection, but did not complete a report as required by the Act and regulations. He also testified that it was not possible to do a move out inspection as the Tenants "skipped town", and dropped off the keys on November 21, 2015.

The Landlord disputed the Tenants claim that the rental unit was left in the same condition as when the tenancy began. The Landlord stated that there might have been one or two items left from previous renters which were removed, but that the majority of the items depicted in his photos were the Tenants' belongings.

The Landlord further testified that the floors and carpet were so badly damaged from the Tenants' pets' urine that it was impossible to walk in the house because of the overwhelming smell.

The Landlord submitted photos in evidence which depicted the following:

- the front of the house with a dining room table top and sofa on the lawn;
- boxes, paper and beverage containers on the front steps.
- garbage, shoes and a bike helmet on the patio;
- exercise equipment, outdoor furniture, fuel containers;
- a rusted and dirty freezer;
- an oven which had not been cleaned;
- outdoor furniture covered in leaves; and
- vinyl trim and carpeting.

The Landlord stated that he was unaware of the extent of the damage caused by the Tenants until they moved out. He further stated that he had not been in the rental home in the 18 months prior to the end of the tenancy as every time he tried to go into the rental they had an excuse, as to why he could not come in. He also claimed that in the last year of the tenancy the Tenants had a large dog (for which he did not grant permission) which caused all the urine stains in the carpet.

The Landlord stated that he believed the Tenant's caused the damage and left the items depicted in the photos submitted in evidence. The Landlord further stated that, "no one in their right mind would have stayed in a house in the condition the Tenants' claim the house was in when they moved in".

In response to the Tenants' claim for \$500.00 for losses they claim from the lack of heat in the home, the Landlord submitted a receipt for \$1,168.49 for repairs which he says confirms that he attended to the repair in a timely manner.

The Landlord disputed the Tenants claims that their right to quiet enjoyment was negatively affected by the listing of the rental property. He testified that the Tenants were provided proper notice when the property was listed. He further stated that because the Tenants were so difficult the agents were not able to show the property and in a short time the Landlord simply took the property off the market. Introduced in evidence was a letter from the realtor, J.W., who confirmed that he was only able to take one prospective purchaser into the property. The Landlord further testified that the property was only listed for 60 days as the Tenants would not cooperate with the listing.

At the conclusion of the hearing, J.W. claimed that she submitted to the Branch a USB memory stick with 119 images as well as three videos. That evidence was not before me. When I asked her to confirm the date she provided this evidence she stated she could not confirm the specific date in which that evidence was provided. After some time she stated that she believed she filed this evidence under the file number which was heard November 18, 2015.

### Analysis

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

The Tenants are entitled to return of the rent they paid pursuant to the illegal rent increase. The presiding Arbitrator found that the June 28, 2014 rent increase was of no force and effect. Accordingly, the Tenants are entitled to compensation for the amount of rent they paid in excess of the allowable amount. In this case, they paid \$100.00 per month for 12 months from July 2014 to June 2015 such that they are entitled to return of **\$1,200.00** they paid pursuant to the June 28, 2014 rent increase.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenants have failed to provide sufficient evidence to support a finding that they suffered a loss relating to the alleged inadequate heating. I also find that the Landlord made the necessary repairs in a timely fashion such that the Landlord was not in breach of the Act in this regard. Accordingly, I dismiss the Tenants' claim for \$500.00 for losses they claimed to have suffered from February 1 to 4, 2014.

Similarly, I find the Tenants have failed to prove their claim for \$2,100.00 for the alleged loss of quiet enjoyment due to the listing of the property from July 1, 2015 to August 24, 2015 as claimed on the Tenants' Monetary Order Worksheet.

While it is possible the showings of the rental property were, at times, disturbing to the Tenants, the onus is on the Tenants to prove their claim in this regard.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

*Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment* provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

While it can be disruptive to Tenants when a rental property is listed for sale, the onus is on the Tenants to prove that showings of the property to prospective buyers infringed on their right to quiet enjoyment.

The Landlord submitted in evidence letters from the listing agent, which suggest the agent gave the Tenants the required 24 hours' notice. I am persuaded by the listing agents' letter wherein he writes that due to the Tenants' opposition to the listing of the property the property was taken off the market in a short time.

After careful consideration of the evidence, and the testimony of the parties, I find the Tenants have failed to prove the Landlord, or the Landlord's agents, breached section 28. Accordingly, I dismiss the Tenants' claim for \$2,100.00 for breach of quiet enjoyment.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

**Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the Landlord's evidence that the Tenants failed to clean the rental as required by the Act. I am persuaded by the Landlord's photos that the rental unit was not left reasonably clean. I am further persuaded that the Tenants left items at the rental which should have been removed when the tenancy ended.

The Landlord notes on his application for dispute resolution that the Tenants left over 2000 pounds of garbage both inside and outside the rental unit. The Landlord further claims that the cost to remove the garbage and clean the rental was over \$900.00. Additionally, he claims the cost to repair the damage was \$3,000.00. Despite these claims, he writes that he sought only \$500.00, representing the amount of the security deposit. While the evidence submitted supports a finding that the Landlord's losses exceed \$500.00 I award him the **\$500.00** claimed.

The Tenants sought recovery of the filing fee. As the parties have enjoyed divided success I order that the Tenants bear the cost of their filing fee.

The Landlord confirmed he continued to hold the Tenants' security deposit of \$500.00; I grant him authority to retain the \$500.00 as payment of the amount awarded to him pursuant to this Decision. The Tenants are entitled to recover of the \$1,200.00 as set out above and are therefore granted a Monetary Order in the amount of **\$1,200.00**. They must serve this Order on the Landlord and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Tenants are entitled to a Monetary Order in the amount of **\$1,200.00** representing recovery of \$1,200.00 in rent paid pursuant to the June 28, 2014 illegal rent increase. Their claim for compensation for losses relating to the furnace, their claim for two month's rent for breach of quiet enjoyment, and their claim for recovery of the filing fee are similarly dismissed.



The Landlord's claim for \$500.00 for cleaning of the rental unit and removal of the Tenants' garbage is granted. The Landlord may retain the Tenants' \$500.00 security deposit as payment of this sum.

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: March 18, 2016

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Residential Tenancy Branch

