



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, submitted to the Residential Tenancy Branch on January 11, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): a monetary order for money owed or compensation for damage or loss; and an order granting recovery of the filing fee.

The Tenant and the Landlord each attended the hearing on their own behalf. Both provided their solemn affirmation at the outset of the hearing.

The parties expressed no concerns regarding receipt of the Notice of a Dispute Resolution Hearing, or of the evidence submitted.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

A written tenancy agreement was submitted with the Tenant's documentary evidence. It confirms a month-to-month tenancy commenced on August 8, 2012. At that time, rent of \$800.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00.

The Tenant's claim is for an alleged overpayment of rent and for compensation to which she became entitled when she was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 30, 2015 (the "2 Month Notice"). The 2 Month Notice had an effective date of February 1, 2016. The Tenant provided notice and moved out of the rental unit on December 31, 2015.

With respect to her claim to be reimbursed for an overpayment of rent, the Tenant testified that the Landlord discussed raising the rent with her in or about July 2013. Effective August 1, 2013, the Tenant began paying rent of \$815.00 per month to the Landlord. The Tenant testified that from August 1, 2013 to December 31, 2015 – a period of 17 months – she overpaid \$405.00. Copies of cheques in support of this total were submitted with the Tenant's documentary evidence.

The Tenant stated she was not aware of her rights under the *Act*, and did not know the Landlord was required to issue a notice of rent increase in accordance with the *Act*.

The Tenant also claims she is entitled to receive one month of rent arising upon being served with the 2 Month Notice. She stated that the Landlord initially denied reimbursing this amount because a month's rent had already been waived in June 2014 for other unrelated reasons.

In reply, the Landlord provided oral testimony about the rent increase. He agreed he discussed a rent increase with the Tenant as alleged. However, he asserted that the rent was increased with the Tenant's verbal agreement. In addition, he submitted that the rent increase was fair because it was less than the rent increase could have been under the *Act*.

With respect to compensation to which the Tenant may be entitled, the Landlord acknowledged he was unaware of the Tenant's rights upon issuing the 2 Month Notice and conceded the Tenant was entitled to receive one month of rent.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find the following:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with this *Act*, the Regulations or a tenancy agreement.

First, the Tenant seeks a monetary order for alleged overpayments of rent from August 1, 2013 to December 31, 2015, in the amount of \$405.00.

Section 42 of the *Act* provides a mechanism for landlords to increase rent. This section confirms a landlord is required to give a tenant 3 months' notice of a rent increase, and that the notice must be in the approved form. In this case, the Landlord acknowledged the rent increase was not initiated by providing notice in the approved form, but that the rent increase was by verbal agreement.

However, section 7 of the *Act* also places an obligation on the Tenant. It states:

“A landlord or tenant who claims compensation for damage or loss...must do whatever is reasonable to minimize the damage or loss.”

The Tenant claims she was unaware of her rights for the period while the alleged overpayments were being made. As a result, she did not file the Application until January 11, 2016 – less than two weeks after the tenancy ended.

I find it is more likely than not that the Tenant agreed to the rent increase. I am supported in this conclusion by the Tenant's own evidence showing regular payments of rent for 17 months.

In addition, I note that the tenancy ended before the Tenant filed the Application, and that this aspect of the claim was permitted to grow for 17 months without the Tenant taking steps to minimize the damage or loss, as required by section 7 of the *Act*. Therefore, I dismiss this aspect of the Tenant's claim.

Second, the Tenant has applied to be compensated pursuant to section 51(1) of the *Act*. This provision states:

“A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.”

I find the Tenant has demonstrated an entitlement to compensation pursuant to section 51(1) of the *Act*. I award the Tenant \$815.00, which is the equivalent of one month of rent.

As the Tenant has been largely successful with her claim, and the claim for the overpayment of rent was not without merit, I award the Tenant \$100.00 as recovery of the filing fee.

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$915.00, which consists of compensation pursuant to section 51 of the *Act* (\$815.00) and the filing fee (\$100.00).

**NOTE:** The Residential Tenancy Branch website provides information to assist landlords and tenants to understand their rights and responsibilities before, during, and after a tenancy. The Landlord is strongly encouraged to familiarize himself with the *Residential Tenancy Act* and Regulation, and may wish to contact an Information Officer at the Residential Tenancy Branch for further information before entering into or ending a further tenancy agreement.

### Conclusion

The Tenant is granted a monetary order in the amount of \$915.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 14, 2016

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Residential Tenancy Branch