



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL, CNR, MNDC, OLC, LRE, MT, MNDC,

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on September 19, 2016 for the following issues: to cancel a notice to end tenancy for the Landlord’s use of the property and for unpaid rent; for more time to cancel the notices to end the tenancy; for the Landlord to comply with the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to suspend or set conditions on the Landlord’s right to enter the rental unit. The Tenants then amended their Application on November 2, 2016 for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

### Preliminary Issues

The three Tenants named on the Application appeared for the hearing. The Tenants explained that the third Tenant named on the Application, who is referred to as “AR” in this Decision, was not a party to this dispute. As a result, with the agreement of the Tenants, I amended the Tenants’ Application by removing AR as an applicant to this dispute pursuant to my authority under Section 64(3) (c) of the Act. As a result AR does not appear on the style of cause on the front page of this Decision.

There was no appearance for the Landlord during the 75 minute duration of the hearing. As a result, I turned my mind to the service of documents by the Tenants for this hearing. The Tenants testified that they served the Landlord with their Application and their amended Application personally to the Landlord. In addition, I noted that the Landlord submitted a number of evidence packages prior to this hearing. Therefore, I am only able to conclude that the Landlord was aware of this hearing. On this basis, I find that the Landlord was served pursuant to Section 89(1) (a) of the Act by the Tenants and had a duty to appear for this hearing.

With respect to the Landlord's documentary evidence which was before me, the Tenants confirmed that they had not been served by the Landlord with any of the evidence that was before me from the Landlord. As there was insufficient evidence before me that the Landlord had served the Tenants with her evidence and failed to appear for this hearing, I was unable to consider the Landlord's documentary evidence in my findings.

The Tenants confirmed that they had vacated the rental unit at the end of October 2016. Therefore, I dismissed the Tenants' Application to cancel the notices to end tenancy and to suspend or set conditions on the Landlord's right to enter the rental unit as these are now moot issues.

During the hearing, the Tenants decided to abandon a significant portion of their monetary claim. The Tenants decided to focus on the portion of their monetary claim for additional rent they paid during this tenancy in the amount of \$1,000.00 which they wanted to recover from the Landlord.

#### Issue(s) to be Decided

Are the Tenants entitled to the return of \$1,000.00 paid during this tenancy as overpayment of rent?

#### Background and Evidence

All testimony was provided under affirmation and both Tenants confirmed each other's oral testimony as follows. This tenancy started on August 1, 2016 on a month to month basis. No written tenancy agreement was entered into and no security deposit was requested. The Tenants agreed to rent three bedrooms all of which were located in the basement portion of the rental home. The remaining areas, such as the bathroom and living room were considered to be common areas to be shared with other renters in the rental home. The Landlord did not reside in the rental home and did not share kitchen and bathroom facilities.

The Tenants testified that before the tenancy began, the Landlord was unable to provide the Tenants with three bedrooms promised because the third bedroom was being occupied by another renter who the Landlord was in the process of evicting.

As a result, the parties agreed that the rent payable for the two bedrooms would be \$850.00 payable on the first day of each month. The parties agreed that when the third bedroom became available this would be used by the female Tenant's son AR under a

separate tenancy agreement with the Landlord. In the interim time period AR stayed in one of the two bedrooms provided to the Tenants by the Landlord in the rental home.

The Tenants testified that they paid rent to the Landlord on August 1, 2016 in the amount of \$850.00 pursuant to their verbal agreement. However, the relationship with the Landlord started to breakdown and quickly deteriorated. The Tenants testified that by the end of August 2016, the Landlord still had not evicted the renter in the third bedroom despite giving him multiple eviction notices and then telling him not to leave.

The Tenants testified that prior to their rent payment for September 2016, the Landlord informed the Tenants that she was increasing their rent for the two bedrooms they were occupying to \$1,350.00. When the Tenants questioned the increased amount, the Landlord informed them that the tenancy did not come under the jurisdiction of the Act and that the tenancy was under the Hotel Innkeepers Act. The Landlord informed them that she was able to increase the rent to whatever amount she liked. The Tenants testified that the Landlord threatened that if they did not pay the increased rent she would have them kicked out and could easily get two renters in to pay the increased amount.

The Tenants testified that fearing their tenancy was going to end, they paid the increased amount of \$1,350.00 in rent for September 2016. However, despite this the Tenants were served with a multitude of notices to end tenancy which the Landlord had amended and changed to suit her circumstances. As a result, the Tenants applied to dispute the notices to end tenancy. The Tenants testified that they then continued to pay the \$1,350.00 the Landlord had requested for October 2016 rent because they did not want to jeopardize the ending of the tenancy as the matter was going to be adjudicated on in this hearing. However, the situation deteriorated so much that the Tenants vacated the rental unit at the end of October 2016. As a result, the Tenants now claim \$1,000.00 in the overpayment of \$500.00 they made for the months for September and October 2016 from the Landlord as illegal rent increases.

### Analysis

I have considered the undisputed evidence of the Tenants in the absence of the Landlord as follows. The Act defines a “**tenancy agreement**” as an agreement, whether written or **oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or

agreements are enforceable. I find that there is not sufficient evidence before me to suggest that this tenancy is exempt from the Act. Based on the foregoing and on the undisputed evidence before me, I find that the parties engaged into a month to month tenancy agreement which required the Tenants to pay rent in the amount of \$850.00 per month and is governed by the Act.

Section 14 of the Act provides that a party may not make a unilateral change to a tenancy agreement. In addition, the Act requires a party to follow the rent increase provisions which govern a tenancy and states that rent can only be increased by an allowable amount after one year of the tenancy expires and after a tenant is given three months of notice of the rent increase. In this case, I find the Landlord had no authority under the Act or was given consent by the Tenants to increase the rent from \$850.00 to \$1,350.00 after the first month of the tenancy.

Therefore, I am only able to conclude that the Tenants are entitled to \$1,000.00 for the illegal rent increase imposed by the Landlord on the Tenants. The Tenants are issued with a Monetary Order for this amount which must be served on the Landlord. The Tenants may then file and enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment in accordance with the Tenants' written instructions. Copies of this order are attached to the Tenants' copy of this Decision.

### Conclusion

The Tenants' monetary claim for \$1,000.00 for an illegal rent increase is granted. The Tenants' abandoned the remainder of their monetary claim which is hereby dismissed. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 16, 2016

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Residential Tenancy Branch