



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNC MNDC OLC DRI MNSD

### **Introduction**

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served copies of the tenants' application and evidence. The landlords did not submit any written evidence for this hearing.

As the tenants confirmed receipt of the 1 Month Notice on January 4, 2017, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

At the beginning of the hearing the tenants indicated that they had moved out on January 25, 2017. As this tenancy has now come to an end, the tenants' application to cancel the 1 Month Notice, and for an order for the landlords to comply with the *Act* and tenancy agreement are cancelled. The tenants also indicated during the hearing that they withheld rent to offset the rent increase by the landlords. As the tenancy has now come to an end, and the tenants are not

seeking monetary compensation for the rent increase, this portion of the tenant's application is cancelled.

The landlords applied to remove the named respondent TV as a landlord on the application as TV is the tenants' 15 year old daughter. The tenants were not opposed. Accordingly TV will be removed as a landlord in this dispute.

### **Issue(s) to be Decided**

Are the tenants entitled to monetary compensation for loss or other money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a monetary award for the return of their security deposit?

Are the tenants entitled to recovery of the filing fee for this application from the landlords?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in October 2015 when DS moved in, and RP moved in in August 2016. No written tenancy agreement was ever signed. The landlords collected a security deposit of \$425.00, and still hold that deposit. The tenants testified that a forwarding address was provided to the landlord on February 1, 2017. The landlords indicated in the hearing that they would return the tenants' security deposit to them. The tenants moved out on January 24, 2017, prior to the effective date on the 1 Month Notice.

The tenants testified that monthly rent was originally set at \$850.00, and increased to \$1,000.00 by text message on July 9, 2016, which was to take effect August 1, 2016. The tenants were told the reason for the increase was the additional tenant.

On January 1, 2017 the tenants decided to pay the landlord \$100.00 in rent only as believed the \$150 rent increase was illegal, and deducted the \$750.00 in overpayment for the months of August 2016 through to December 2016.

On the same date, the landlords gave notice by email that the tenancy was ending for the purpose of landlords' own use. On January 4, 2017, the tenants were issued a 1 Month Notice with an effective move-out date of February 1, 2017, which states that the "tenant has allowed an unreasonable number of occupants in the unit/site", and "the main reason why we need to end tenancy is because we need the suite to ourselves. We need extra room for my children.

Another reason why we decided to end the tenancy NOW is because there has been an extra body in the suite for the past few months”.

A copy of the 1 Month Notice was provided in the tenants’ evidence. The tenants testified that they were never given any compensation, and that they no longer felt safe in their home. They testified that the power was cut in the kitchen and bathroom on January 23, 2017, and an email was sent to the landlords, which was ignored.

The tenants testified that the landlords then cut off the heat to their suite, which caused their child to become ill. The landlords denied that they were responsible, stating that they did not have heat as well. The tenants testified that three men then banged on the doors and windows who then threatened and assaulted them. On January 24, 2017, the tenants left the home as they feared for their safety, leaving their belongings behind.

The tenants indicated in their application that they are seeking a monetary order of \$20,000.00 in compensation for the losses associated with this tenancy, however, the tenant’s monetary order worksheet indicated only \$2,389.96 in losses as listed in the table below:

<b>Item</b>	<b>Amount</b>
Storage Locker	\$241.65
Movers	498.75
Moving Supplies	29.22
Probiotics	34.54
Dumping of Garbage	43.00
Baby Medication	42.80
Cost of Moving to new place	1,500.00
<b>Total Monetary Order Requested</b>	<b>\$2,389.96</b>

The tenants provided receipts to support some of the monetary order requested, as well as video footage to show the lack of power and intimidation by men at their door. The tenants testified that they returned on February 4, 2017 only to find that their furniture was moved outside, and the locks changed.

The landlords did not dispute that the furniture was moved outside and the locks were changed on February 4, 2017, but testified that they had confirmed with the police before doing so. The landlords dispute that they had shut the power off, stating that there was no power to the entire house.

## **Analysis**

### **Terminating or restricting services or facilities**

**27** (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

### **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...

- (b) freedom from unreasonable disturbance...

While I have considered the tenants' full claim, I note that since the breakdown of their claim provided no indication of what the monetary award sought between \$2,389.96 and \$20,000.00 was for, I have only considered their claim up to \$2,389.96.

I have considered the testimony and submissions of both parties, and I find that the tenants had provided testimony and evidence to support that the landlords failed to fulfill their obligations as required by sections 27 and 28 of the *Act* as stated above. From these submissions, I find on a balance of probabilities that the despite being served with a 1 Month Notice effective February 1, 2017 the tenants vacated the rental unit prior to the effective date because the landlords had terminated power and heat to their unit. The tenants provided video footage documenting the date and time that they were without power.

From the video footage provided by the tenants showing how they were threatened, I find that the tenants faced extreme distress as a result of the landlords' actions, to the point that they felt it was necessary to vacate the suite prior to the effective date of the 1 Month Notice. Accordingly I find the tenants are entitled to a monetary award equivalent to 1 month's rent for the landlords' failure to abide by sections 28 and 28 of the *Act*.

Section 42 of the *Act* stipulates that a notice of rent increase must be provided 3 months in advance of the increase and be in the approved form, available on the RTB website; a text message does not comply with this requirement. As such, I find the text message sent to the tenants on July 9, 2016 for a rent increase to begin on August 1, 2016 is not compliant with Section 42. Therefore, I find that rent for the duration of the tenancy was \$850.00.

I find that the tenants demonstrated that they had incurred a monetary loss due to the actions of the landlords. The tenants submitted receipts for the following expenses totaling \$889.96. Accordingly I find that the tenants are entitled to a monetary order for that amount.

Item	Amount
Storage Locker	\$241.65
Movers	498.75

Moving Supplies	29.22
Probiotics	34.54
Dumping of Garbage	43.00
Baby Medication	42.80

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 deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit for damage to the rental unit, and the landlord must return the security deposit plus applicable interest and must pay the tenants an additional monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

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. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlords had not returned the tenant's security deposit in full within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlords applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit

As the tenants were successful in their monetary claim, I find that they are entitled to recover the \$100.00 filing fee.

### **Conclusion**

I issue a \$2,839.96 Monetary Order in favour of the tenants under the following terms:

<b>Item</b>	<b>Amount</b>
Monetary Award for Landlord's Failure to Comply with Sections 27 and 28 of the <i>Act</i> .	\$850.00
Recovery of Losses Incurred by the Tenants	889.96
Recovery of the Filing Fee	100.00
Return of Security Deposit	425.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	425.00

<b>Total Monetary Order</b>	<b>\$2,689.96</b>
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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: July 20, 2017

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**Residential Tenancy Branch**