



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, ERP, MNDC, PSF, RR, FF

### Introduction

This hearing was convened in response to an application made October 16, 2017 and an amended application made December 15, 2017 by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order in relation to a rent increase - Section 43;
2. An Order for emergency repairs - Section 32;
3. A Monetary Order for compensation - Section 67;
4. An Order for the provision of repairs, services and facilities - Section 65;
5. An Order for a rent reduction - Section 65; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenants confirmed that they moved out of the unit. As the claims in relation to the provision of repairs, services and facilities and a rent reduction are only relevant to an ongoing tenancy I dismiss these claims.

### Issue(s) to be Decided

Are the Tenants entitled to compensation for a rent increase?

Are the Tenants entitled to compensation for having paid electricity costs during the tenancy?

Are the Tenants entitled to compensation for a lack of repairs by the Landlord?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The following are undisputed facts: The Parties entered into a written tenancy agreement. The tenancy started on November 1, 2012. At the outset of the tenancy rent of \$800.00 was payable on the first day of each month and the Landlord collected \$400.00 as a security deposit and \$200.00 as a pet deposit. No move-in or move-out condition inspections were offered or conducted. The Tenants have not provided their forwarding address to anyone. On December 4, 2017 the unit was sold with possession by the purchasers on that date.

The Landlord states that on or about October 15, 2017 the Tenants were informed that the unit was being sold and that it would be up to the purchaser to determine whether the tenancy would end. The Landlord states that he has no knowledge of the tenancy after December 4, 2017 and that tenancy monies were transferred with the sale through his lawyer. The Tenant states that they were not told when the unit was sold and that they did not provide any notice to any person when they moved out of the unit on January 1, 2018.

The Tenants state that effective November 1, 2015 the Landlord increased their rent to \$850.00 without any notice and without the use of the Residential Tenancy Branch (the "RTB") form. The Tenant provides a copy of a rent receipt dated August 31, 2017 as supporting evidence of the rent increase. The Tenant states that they paid cash for the rent and the Landlord did not always provide receipts. The Tenant claims \$1,200.00 in overpaid rent. The Landlord agrees that the Tenants were not given any notice of rent increase on an RTB form but states that the rent was not increased until July 2017. The Landlord states that the Tenants were only provided with receipts when they requested one from the Landlord.

The Tenants state that the tenancy agreement provides that the rent includes the provision of electricity but that this was not noticed by the Tenant at the time of signing the tenancy agreement. The Tenant states that there was no electricity hooked up to

the unit at the outset of the tenancy and that the Tenant therefore had the utility connected in its name. The Tenant states that he only noticed the utility provision a few months ago and that at the end of June 2017 when paying the rent the Tenant informed the Landlord of the tenancy agreement provision. The Tenant states that the Landlord refused to provide the electricity. The Tenant claims the costs of electricity for the past two years in the amount of \$5,184.11. The Tenant states that a spread sheet of the electrical payments was provided as evidence however this evidence could not be located in the Tenant's evidence materials. The Tenant read its copy of the spread sheet and states that between June and the end of the tenancy they incurred the following electricity costs:

- \$289.18 for the period May 18 to July 17, 2017;
- \$209.89 for the period July 18 to September 18, 2017;
- \$425.62 for the period September 19 to November 20, 2017; and
- \$338.00 for the period November 21 to January 01, 2018.

The Landlord states that the Tenants did not inform the Landlord of the tenancy agreement provision and that the Landlord did not retain a copy of the agreement for himself. The Landlord agrees that the Tenant paid July 2017 rent sometime at the end of June 2017 in person.

The Tenant states that during the tenancy the Landlord failed to make repairs to the furnace, a roof leak, a flood in the basement, the appearance of mold and broken windows. The Tenant claims a total of \$9,628.59 for the lack of repairs. The Tenant states that they did not seek any order for repairs during the tenancy because the Landlord kept assuring the Tenants that repairs would be made. The Tenant states that they believed that the Landlord would finally make the repairs after the Landlord received their application for dispute resolution.

The Tenant states that the furnace stopped working two years ago and that the Tenants had been heating the unit since then with portable heaters that they purchased

themselves. The Tenant states that the Landlord was verbally informed the Landlord in November 2016 and that the Landlord never made any repairs to the furnace. The Tenant provides a photo of the furnace indicating that it was last serviced in 1998. The Landlord states that the Tenants never informed him of the furnace not working and doubts the Tenant's veracity of such given the cold weather that occurred during the winter months. The Landlord asks how the Tenants could have lived in the unit without a working furnace. The Tenant states that the furnace was electric and that the costs for electricity in November 2015 were \$354.00 and the costs in November 2016 was \$216. The Tenant states that the electricity costs for January 2016 was \$763.83 and the costs for January 2017 was \$773.78.

The Tenant states the basement unit flooded in February 2017 and caused damage to a carpet and other belongings that were stored in the basement. The Tenant states that the flood occurred from the melting of the snow and the ingress of water. The Tenant states that they did not provide any details of damaged belongings as they did not know how to assess their losses. The Tenant states that the Landlord was informed of the flood at the beginning of March 2017 when the Tenant went to pay the rent and when the Landlord returned from out of country. The Tenant states that mold appeared in the basement about the same time as the flood and was reported at the same time as the flood was reported. The Tenant states that the Landlord did not attend the unit to inspect the flood or the mold. The Tenant provides photos of the unit. The Landlord states that the Tenants never told the Landlord about any flood or the presence of mold. The Landlord states that the bank inspector for the sale inspected the unit and did not mention anything about mold. The Landlord states that he was also present for the inspection and never saw any mold. The Landlord states that the photos provided by the Tenants shows only that they were not good at cleaning.

The Tenant states that windows to the unit were broken at the outset of the tenancy and that the Landlord told them at the time that they would be repaired. The Tenant states that no such repairs occurred. The Tenant provides photos of the windows. The

Landlord states that there were no broken windows at move-in and that the tenants never reported any broken windows to the Landlord during the tenancy.

The Tenant states that the roof started to leak in February 2016 and was reported to the Landlord immediately. The Tenant states that the Landlord did not inspect the leak and did not make any repairs. The Landlord states that he was only told about the roof leak in May or June 2016. The Landlord states that the roof was inspected and that a small leak was repaired by a friend on June 3, 2016. The Landlord provides a letter from this person about making the repairs to the roof. The Landlord states that the Tenants never reported any further issues with a leak after this repair.

The Tenants state that they had to move out of the unit as it was not liveable. The Tenants claim their moving costs of \$500.00. The Tenant states that their friends moved them in exchange for food and tokens.

### Analysis

Section 42 of the Act provides, inter alia, that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and a notice of a rent increase must be in the approved form. Section 43(5) of the Act provides that if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase. Given the undisputed evidence that the Landlord did not provide any notice of a rent increase on an approved form I find that the Tenant has substantiated that the Landlord did increase the rent to \$850.00 without complying with the Act. However given the lack of supporting evidence of the payment of the increased amount for any period other than a receipt for August 2017 rent and considering the Landlord's evidence that the rent was increased as of July 2017 I find on a balance of probabilities that the Tenants have only substantiated a refund of the overpaid rent for July to December 2017 inclusive, in the amount of **\$300.00** (50 x 6 months).

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. There is no dispute that the tenancy agreement requires the Landlord to provide electricity. I accept the Tenant's evidence of informing the Landlord of its obligations in relation to the provision of electricity at the end of June 2017. However the Tenants never raised the issue of the utilities prior the end of June 2017 and the Landlord never had any opportunity to comply with the tenancy agreement before this date. I consider the Tenant's failure to raise the issue sooner as an undue lapse of time or an undue delay that limits the Tenants right to a complete restoration of the terms of the tenancy agreement as it relates to the provision of electricity. For these reasons and as the Tenants did seek to have the Landlord adhere to this requirement at the end of June 2017 I find that the Tenants are only entitled to compensation for the period July 1 to December 31, 2017 inclusive.

Although the Tenants did not supply the electrical bills, the Tenant referred to its own copy of the spread sheet and the Landlord did not dispute the amounts. I therefore find that the Tenants are entitled to \$72.30 for July 2017 ( $289.18/8 \times 2$ ) + \$209.89 for the period July 18 to September 18, 2017 + \$425.62 for the period September 19 to November 20, 2017 and \$338.00 for the period November 21 to December 31, 2017 for a total amount of **\$1,045.82**.

Given the Landlord's supported evidence of repairs to the roof I find on a balance of probabilities that the Tenants have not substantiated that the Landlord was negligent in making repairs to the leak. I do not consider a photo of a service date on the furnace to be evidence of a non-working furnace and there is nothing to otherwise support the Tenant's evidence of a non-functioning furnace. While a flood may have occurred and given the photos, I accept that there was mold in the basement of the unit, there is

insufficient evidence to support that the Tenants suffered any losses or damages as a result of either the flood or the mold. The windows may or may not have been broken at the outset of the tenancy. There is no evidence to support that the Tenants requested repairs from the Landlord during the tenancy and the Landlord's evidence is that no reports were made about the furnace, flood, mold and broken windows. For the above reasons I find on a balance of probabilities that the Tenants have not substantiated that the Landlord was informed of the problems with the furnace, flood, mold or window, that the Tenants suffered the costs claimed or that the Landlord was negligent in making repairs. I therefore dismiss the claim for compensation for the furnace, a roof leak, a flood in the basement, the appearance of mold and broken windows.

Given the evidence that the Tenants did not incur the costs claimed for their moving, I dismiss the claim for moving costs.

As the Tenants have been somewhat successful and I find that the Tenants are entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$1,445.82**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,445.82**. If necessary, this order may be filed in the Small Claims 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: January 04, 2018

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Residential Tenancy Branch