



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, FFT, PSF

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

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 parties acknowledged receipt of evidence submitted by the other.

### Issue to be Decided

Are the tenants entitled to a monetary award for compensation arising from a loss in this tenancy?

Are the tenants entitled to an order compelling the landlord to provide services or facilities by law?

Are the tenants entitled to an order regarding a disputed rent increase?

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

### Background, Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenants' testimony is as follows. The tenancy began on October 1, 2015 and is ongoing. The tenants are obligated to pay \$900.00 per month in rent plus \$20.00 for parking. FT testified that the landlord charged them \$75.00 for electronic fobs to access the property. FT testified that the security deposit should be sufficient for that type of item and wants the \$75.00 back. JT testified that after their first year of tenancy, the landlord raised the rent from \$825.00 to \$900.00 without notice and without their consent. The tenants seek to recover 75.00 per month for 15 months for the illegal increase. The tenants testified that the landlord removed a service or facility of their unit by nailing their back gate shut on June 29, 2017. JT testified that other tenants have gates and that the landlord took away this service without notice and without authorization. FT testified that they should be compensated \$1130.00 for the loss by charging the landlord five dollars a day for 226 days.

The tenants are applying for the following:

1.	Fob Deposit	\$75.00
2.	Illegal rent increase return	1125.00
3.	Loss of Use of rear gate	1030.00
4.	Filing Fee	100.00
5.		
6.		
	Total	<b>\$2330.00</b>

The landlords' agent gave the following testimony. The landlords' agent testified that the fob deposit is fully refundable at the end of the tenancy and that the landlord is allowed to charge for this item as these are additional access devices to the ones provided to the tenants. The landlords' agent testified that the rent has always been \$900.00 and that the tenants were rebated 75.00 a month for 12 months during the first year as a rent incentive to sign for a one year term. The landlord testified that the gate referred to by the tenants is actually a fence and has never been an access point until the subject tenants took out the screws and opened the panel up.

## Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Fob – \$75.00.

Residential Tenancy Regulation 6 addresses this issue as follows:

### **Refundable fees charged by landlord**

- 6** (1) If a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is
- (a) refundable upon return of the key or access device, and
  - (b) no greater than the direct cost of replacing the key or access device.
- (2) A landlord must not charge a fee described in subsection (1) if the key or access device is the tenant's sole means of access to the residential property.

The landlord advised that the fobs are additional access devices and not the sole means of entering any of the areas of the property and that the tenants have other keys to access the building and their suite. The tenants did not dispute the landlord agents' testimony. Based on the above, I dismiss this portion of the tenants' application.

Illegal Rent Increase - \$1125.00

The landlord submitted the tenancy agreement from October 1, 2015 that clearly shows that the rent was \$900.00 per month and that the tenants received a rent incentive of one free month equal to a \$75.00 reduction in rent payable per month for 12 months and that the rate then returned to the agreed upon amount of October 1, 2016. Based on the documentation before me and that the tenants submitting a copy of the same

tenancy agreement acknowledging that the document is correct, I find that the rent was \$900.00 from the outset of the tenancy. Based on the above, the tenants have not provided sufficient evidence of an illegal rent increase and I therefore dismiss this portion of their claim

Loss of Use of rear gate and to provide service and facilities - \$1030.00.

The tenants testified that they have lost the use of the rear gate that is situated in the back of their ground floor unit. The landlord provided photos of the "gate". The landlord further provided the move out condition inspection report from the previous tenants that shows that there wasn't any damage to the rear fence. The landlords' agent submits that the tenants have unscrewed that panel for their convenience and that it was not a service or facility at any time. The landlord agent submits that it is a fence that the tenants have turned into a make shift gate.

The landlord provided several photos that clearly show that this is a fence panel and not a gate and that it was not used for or meant to be a gate prior to the subject tenants unscrewing the panel. I agree with the landlords' agent and find this to be a fence panel and not a gate or access point. The tenants have failed to satisfy me that was a service or facility as agreed upon per their tenancy agreement and therefore are not entitled to any compensation. Based on the insufficient evidence before me, I must dismiss this portion of their application.

The tenants have not been successful in their application.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 19, 2018

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Residential Tenancy Branch