



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC, AS

### Introduction

The tenant applies to dispute two purported rent increases and to recover rent money overpaid as a result. She also seeks permission to assign or sublet the rental unit..

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Have the landlords unlawfully imposed a rent increase? If so, what if anything has the tenant overpaid as a result? Does the tenant require permission to assign or sublet her tenancy?

### Background and Evidence

The rental unit is a two bedroom basement suite in the landlords' home. There is a second basement suite, rented to others.

The tenancy started in September 2012. There is no written tenancy agreement. Originally there was a second tenant, Mr. M.K. He left the rental unit in January 2016.

The monthly rent was originally \$750.00 per month and the landlords received a \$375.00 security deposit. It appears to be agreed that the landlords returned half the deposit money to Mr. M.K. when he left.

The tenant testifies that over the years there were rent increases and by August 2017 the rent was \$768.00.

She says that in August 2017 the landlords requested a rent of \$850.00; an \$82.00 increase. She says the landlords demanded it because she wanted to take in a roommate.

The tenant says she paid the \$850.00 starting in September 2017 and for October, November and December. She can't be sure she paid \$850.00 for January 2018 but, apparently after taking some advice, she reverted to payments of \$768.00 for the months of February and March 2018.

She says that the landlords have now demanded a rent of \$875.00.

The landlord Ms. H. says there were no rent increases between 2012 and 2015. She says the tenant's co-tenant Mr. M.K. was a real problem at the premises. She does not feel comfortable with the tenant having just anybody as a roommate and she wants to approve any such person.

Mr. H. reiterates that Mr. M.K. was a problem. He also wants to okay any potential roommate.

### Analysis

#### Rent Increase

The landlords have created a significant problem for themselves by not following the procedures required by the *Residential Tenancy Act* (the "Act"). Part 3 of the *Act* sets out a mandatory path for a landlord to impose a rent increase on a tenant. It permits annual rent increases in a percentage amount set by government regulation. It should be noted that percentages are invariably greater than the inflation rate, a definite boon to the landlord.

However, Part 3 is strict. A landlord imposing a rent increase must give the tenant proper notice of it and the approved form must be used. Failure to follow these mandatory requirements will negate the rent increase.

In this case it is clear that when the landlords imposed the rent increase from \$768.00 to \$850.00 effective September 1, 2017 they failed to comply with Part 3 by using the required form or limiting the increase to that allowed by regulation. That increase cannot stand.

The tenant paid four months (I'm not satisfied she paid \$850.00 in January 2018) at the higher rate and so she is entitled to recover \$328.00. In her application she has limited that claim to \$300.00 and so I award her \$300.00.

The landlords have issued another rent increase and it appears to be in the proper form. However, the percentage increase imposed by it has been based upon the \$850.00 figure and so it is incorrect. In result, the recent rent increase is invalid as well. The landlords are entitled to issue a new notice of rent increase, within the percentage allowed by regulation, but based on the true rent of \$768.00.

### Assigning and Subletting

Again, the landlords have put themselves in a difficult position by failing to prepare a written tenancy agreement, as they are required by law to do (s. 13(1) of the *Act*).

In a written tenancy agreement a landlord may limit the number of occupants and may restrict occupancy to only certain persons. The landlords have not done so here and so the only restriction on who may live in this rental unit is that the number of occupant may not be unreasonable.

The tenant has exclusive possession of the rental unit and may take in a roommate if she wishes. The landlords have no say over who that person can be, though the tenant would be wise to ensure that her roommate is acceptable.

A landlord in a month to month tenancy such as this one may unreasonably refuse to permit a tenant to assign or sublet the tenancy. However "assigning and subletting" involve a tenant contracting away her right to exclusive occupation of the rental unit and that is not what is being contemplated here. The taking in of a roommate to share an accommodation is not equivalent to conveying away the tenant's right to exclusive possession; it is not an assignment or a subletting.

### Conclusion

The current rent is \$768.00.

The landlords' permission is not required for the tenant to take a roommate.

The tenant is entitled to a monetary award of \$300.00. I authorize her to reduce her rent for May 2018 by \$300.00 in full satisfaction of the award.

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 30, 2018

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Residential Tenancy Branch