



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI, ERP, OLC, FFT

### Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order regarding a disputed rent increase pursuant to section 41;
- an order for the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

On August 9, 2018, tenants RS, AM, SM and MG applied for dispute resolution for the above remedies. Tenants RS, AM and SM attended the hearing and confirmed they had authority to speak on behalf of tenant MG, who was not present. The landlord attended the hearing and was assisted by his wife. Each party was each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing it became clear that this application did not pertain to four tenants under one tenancy agreement. The parties explained that tenants RS and AM live on one side of a three-plex under a tenancy agreement while tenants SM and MG live on the opposite side under their own tenancy agreement. Because this application involved two distinct parties, tenancies and rental units, they should have been filed separately. Therefore in this decision, I will address the matters brought forward by the primary applicants, tenants SM and MG. Tenant RS and tenant AM's application is dismissed with leave to reapply.

Each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both

parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Withdrawal

During the hearing tenant SM advised that emergency repairs were not needed and she wished to withdraw this portion of her application. The landlord consented to the withdrawal. Accordingly, this portion of the tenants' application is withdrawn and no further action in relation to this portion of the claim is required.

### Issue(s) to be Decided

Are tenants SM and MG entitled to an order regarding a disputed rent increase?

Are tenants SM and MG entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are tenants MG and SM authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

The landlord assumed this tenancy August 31, 2017, when the landlord purchased the property from the tenants' mother, the former landlord. The landlord entered into a written tenancy agreement with tenant SM on July 24, 2017. The parties agreed the tenancy started September 1, 2017 and rent in the amount of \$1,400.00 was payable on the first of each month. Tenant SM remitted a security deposit in the amount of \$700.00 at the start of the tenancy, which the landlord still retains in trust. Tenant SM and MG continue to reside in the rental unit.

Tenant SM testified that on an undisclosed date the landlord told her if she did not pay more rent, he would cancel their agreement and evict her. As a result, effective November 1, 2017 tenant SM and MG began paying rent in the amount of \$1,500.00. The tenant did not receive a Notice to Increase Rent or sign a written agreement. Tenant SM testified that although her tenancy agreement includes water, at some point during the tenancy the landlord began charging her for it. Tenant SM testified that she has paid \$87.00 in water charges. Tenant SM testified that since her mother vacated

the basement unit and the new tenants took occupancy, her quiet enjoyment has been compromised.

In reply, the landlord testified that after the tenant's mother vacated the basement unit, tenant SM agreed to pay rent in the amount of \$1,500.00. The landlord testified that he drafted a new tenancy agreement reflecting this agreement and left a copy with the tenant in October 2017, however tenant SM failed to return a copy of it. The landlord did not respond to tenant SM's allegation of water charges. The landlord acknowledged that the quiet enjoyment of tenant SM has been affected by the basement tenant and in an effort to protect this; he has issued a notice to end tenancy to the basement tenant.

### Analysis

Part 3 of the *Act* imposes restrictions on rent increases. Specifically, rent may only be increased using the approved form, no sooner than 12 months from the date on which the tenant's rent was first payable and by an amount that does not exceed the *Regulations*.

Under Policy Guideline #37, a tenant may agree to, but cannot be required to accept a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, the agreement must be in writing and signed. Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Based on the parties' testimony and in the absence of an approved form or a written signed agreement attesting to the increase, I find the landlord increased the rent in contravention of the *Act*. Accordingly I find the monthly rent payable by the tenants remains at \$1,400.00, the amount required under the tenancy agreement.

Section 43 of the *Act* establishes that if a landlord collects rent that exceeds the *Regulation*, the tenant may deduct the increase from rent. I find the tenants overpaid rent between November 2017 and January 2019. Accordingly, I find that the tenants are entitled to recover \$1,500.00 total (15 months x \$100.00) for this overpayment.

Based on the undisputed testimony and signed tenancy agreement I find water is included in the \$1,400.00 monthly rent. I order the landlord to comply with the signed tenancy agreement and cease billing the tenants for services already included in the rent. I award the tenant recovery of the water charge in the amount of \$87.00.

The landlord is cautioned to ensure the tenant's entitlement to quiet enjoyment is protected. A breach in quiet enjoyment may form the basis of a claim for compensation under the *Act*.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,687.00.

### Conclusion

Tenants RS and tenant AM's application is dismissed with leave to reapply.

The rent for this unit remains at \$1,400.00 per month, as per the written signed tenancy agreement. The tenants are entitled to recover \$1,500.00 in overpaid rent, \$87.00 in water charges and \$100.00 for the filing fee for a total of \$1,687.00 from future rent payments.

I order the landlord to comply with the signed tenancy agreement and cease billing the tenants for a service which is already included in the rent.

The landlord is cautioned to ensure the tenants' entitlement to quiet enjoyment is protected.

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 31, 2019

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Residential Tenancy Branch