



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CARMA COURT APARTMENTS and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

DRI, MNDC, FFT

### **Introduction**

On May 29, 2019, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the following relief:

- for money owed or compensation for damage or loss.
- to dispute a rent increase that is above the amount allowed by law.

The matter was set for a conference call hearing. The Tenants and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issue to be Decided**

- Are the Tenants entitled to money owed or compensation for damage or loss?

### **Background and Evidence**

The parties testified that the tenancy began in February 2006. Rent in the amount of \$565.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$262.50.

The Tenancy agreement provides that no person other than listed in the tenancy agreement may occupy the rental unit. Failure to apply and obtain approval for an additional person to occupy the rental unit is considered a breach of a material term of the agreement. The Tenancy agreement provides that the Tenant agrees that for each additional occupant in the rental unit, not named, the rent will increase by \$100.00 per month.

The Tenants testified that the original tenancy agreement lists Ms. D.D. and her daughter Ms. J.D. as the Tenants. Ms. D.D is now known as Ms. D.S. the co-applicant.

The Tenants testified that Mr. M.S. moved into the rental unit sometime around July 2011. The Tenants submit that the managers at that time did not increase the rent due to an additional occupant. The Tenants provided copies of rent receipts dated as far back as July 12, 2012 that received from the Landlord which provide the rent was received from Ms. D.D. and Mr. M.S.

The Tenants testified that new managers took over at the rental property in May 2017. The new managers approached the Tenant and asked her to start paying the additional \$100.00 per month rent. The Tenants testified that they began paying the additional \$100.00 starting on September 1, 2017, and continued to pay up to and including the rent for July 2019.

The Tenants submitted that they raised the issue with the Landlord back in 2017, and the Landlord responded by written letter why the increase was applied.

The Tenants have paid the \$100.00 increase since September 2017. The Tenants take the position that the additional rent of \$100.00 is an illegal rent increase and are seeking compensation in the amount of \$2,000.00. When the Tenants were asked why they waited almost two years; and applied for compensation just prior to the end of the tenancy, they stated they were dealing with other tenancy issues.

In reply, the Landlords testified that they took over responsibility for the rental property on May 1, 2017. The Landlord testified that he became aware that Mr. M.S. was not a Tenant when he found an uninsured vehicle belonging to Mr. M.S. on the property. The Landlord went through their files and discovered that Mr. M.S. is not listed on the tenancy agreement, and that the additional rent increase of \$100.00 for an additional occupant had not been applied.

The Landlord added Mr. M.S. to the tenancy agreement and increased the rent by an additional \$100.00 effective September 2017.

## Analysis

Section 7 of the Act provides:

*a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the term of the tenancy agreement that requires the Tenant to pay an additional \$100.00 per month for an additional occupant is not an illegal rent increase. This material term of the tenancy agreement was agreed to by the parties at the start of the tenancy and is consistent with section 13 (f)(iv) of the Act as it specifies the variance of rent based on the number of occupants.

I find that the Landlord has not breached or violated the Act, regulation or tenancy agreement. The Landlord decided to enforce the material term of the tenancy agreement by raising the rent by an additional \$100.00.

The Tenants paid the additional amount of rent as required by the tenancy agreement and I find that the Tenants have not established that they have suffered a loss by paying the additional amount of rent. I note that the Tenants benefitted from not paying the additional \$100.00 each month for approximately six years.

I also find that the Tenants did not effectively mitigate against any loss as they waited approximately 22 months before they proceeded with the dispute.

I find that the additional \$100.00 rent payments made by the Tenants is not an overpayment of rent. The Tenants claim to recover these rent payments is dismissed without leave to reapply.

### Conclusion

The Tenants' application for a monetary order for money owed or compensation for damage or loss is not successful and is dismissed.

The Landlord has not breached or violated the Act, Regulation, or tenancy agreement. The Landlord decided to enforce the material term of the tenancy agreement by raising the rent by an additional \$100.00 for an additional occupant.

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: September 18, 2019

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Residential Tenancy Branch