



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDCT, FFT

### Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy received via email on August 30, 2019 and to dispute a rent increase. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the parties had exchanged their respective hearing documents and evidence.

At a preliminary matter, I noted that the tenants had not provided a Notice to End Tenancy in an approved form when they filed their Application for Dispute Resolution on September 19, 2019 but that a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 6, 2019, had been uploaded to the Residential Tenancy Branch. I asked whether the tenants were attempting to amend their Application for Dispute Resolution to dispute the 2 Month Notice dated October 6, 2019. The tenants stated they have accepted the 2 Month Notice and will be vacating the rental unit before the stated effective date. The landlord requested an Order of Possession effective December 31, 2019 to ensure she regains possession of the rental unit. The tenants did not object. Accordingly, I provide the landlord an Order of possession with an effective date of December 31, 2019 that may be served and enforced if necessary. The tenants are at liberty to end the tenancy earlier than December 31, 2019 by giving the landlord at least 10 days of written notice, as provided under section 50 of the Act. I also noted that the tenants are entitled to compensation for receiving a 2 Month Notice and that the parties would be well served to familiarize themselves with the compensation provisions as provided under sections 50 and 51 of the Act.

The balance of this decision pertains to the tenants' dispute of rent increases.

Issue(s) to be Decided

Did the tenants establish that the landlord collected an unlawful rent increase from them? If so, what is the amount the tenants are entitled to recover?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence on October 1, 2015 for a fixed term of one year. The monthly rent was set at \$1,250.00 and the tenants paid a security deposit of \$625.00. Rent included hydro. This agreement is herein referred to as the "first tenancy agreement". Upon expiry of the fixed term, the tenancy continued on a month to month basis.

By way of an email, the landlord notified the tenants that the rent would be increasing to \$1,300.00, including hydro, starting on November 1, 2017. It was undisputed that the landlord did not give the tenants a Notice of Rent Increase and the parties did not execute a new tenancy agreement. The tenants started paying the landlord \$1,300.00 per month starting November 1, 2017. The tenants are of the position the landlord did not increase the rent lawfully and they seek recovery of the \$50.00 overpayment for the period of November 1, 2017 until their rent increased again on February 1, 2019. The landlord pointed out that the increase was only a few dollars over the annual allowable amount and she had not increased the rent in the year prior. The landlord questioned whether the two year statute of limitations applied to this claim.

The tenants submitted that in 2018 the landlord began waffling about what she was going to do with the rental unit and indicated she might sell it. This concerned the tenants greatly since they had young children and were actively farming the community property. The landlord approached the tenants about increasing the rent to \$1,650.00 and in response the parties renegotiated term of tenancy. In their negotiations, which were captured in emails, the parties settled on a monthly rent of \$1,565.00, plus the tenants would pay hydro. The tenants requested and the landlord agreed to delay the requirement to pay \$1,565.00 until February 1, 2019 but that she needed the tenancy agreement to reflect a start date of November 1, 2018 to accommodate her efforts to obtain financing. The parties executed this new tenancy agreement on November 1, 2018 to increase the rent to \$1,565.00, excluding hydro, and entering into a fixed term for the period of November 1, 2018 to November 1, 2019.

The tenants are of the position that the new rental amount that started on February 1, 2019 grossly exceeds that rent increase provisions of the Act and they are entitled to recover the amounts they paid in excess of \$1,250.00 from February 1, 2019 to November 2019.

The landlord acknowledged that she was exploring options with respect to her property, including selling it or moving into it herself, and the tenants' decision to have children and operate a farm impacted her use of the property and resulted in her living elsewhere during the fixed term.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due pursuant to their tenancy agreement. As provided in section 13 of the Act, one of the requirements of a tenancy agreement is that it stipulate the amount of rent payable by the tenant and indicate the services or faculties that are included in the rent, such as utilities. Accordingly, the tenant must pay rent that is stipulated in the tenancy agreement, except in limited circumstances.

Part 3 of the Act (sections 40 through 43) provide for the way a landlord may increase the rent payable during a tenancy. The landlord must serve the tenant with a Notice of Rent Increase, in the approved form, at three full months in advance and for an amount that does not exceed the Residential Tenancy Regulations, an amount the tenant agreed to in writing, or an amount authorized by the Director. Section 43 of the Act provides that where a tenant pays a rent increase that does not comply with the rent increase provisions, the tenant is entitled to withhold the overpaid rent from rent payable or recover the overpaid rent from the landlord.

In this case, the landlord did not serve the tenants with a Notice of Rent Increase and I find she failed to lawfully increase the rent to \$1,300.00 per month starting on November 1, 2017. As such, I find the tenants were remained obligated to pay rent of \$1,250.00 per month and they are entitled to recover the \$50.00 increase they paid for the period of November 1, 2017 through to October 31, 2018, which amounts to \$600.00 [\$50.00 x 12 months]. For reasons set out below, I have found that the parties entered into a new tenancy agreement starting November 1, 2018 and the rent the tenants paid from November 1, 2018 onwards was under a different tenancy agreement.

As for the landlord's position that the two year time limit has passed, I provide the following findings. Section 60 of the Act provides time limits for making a claim. Section 60(1) provides as follows:

**60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

[My emphasis underlined]

The rent increase took effect during the first tenancy agreement and that agreement ended on November 1, 2018 when it was replaced by a subsequent tenancy agreement. The tenants made this claim on September 19, 2019 which is less than two years after the first tenancy agreement came to an end. Therefore, I find the tenants made their claim to dispute the \$50.00 rent increase was made within the statutory time limit for doing so.

As for the tenants' claim to recover an increase in rent to \$1,565.00 starting on February 1, 2019, I find that claim must fail. The tenants argued that the increased rent payment was a violation of the rent increase provisions of the Act; however, the tenants were paying an amount stipulated in a new tenancy agreement they entered into with the landlord. Therefore, I find they paid the rent they were obligated to pay under their second tenancy agreement.

When parties execute a new tenancy agreement, the new tenancy agreement replaces the former agreement. In this case, the parties were in a month to month status and the tenants were not subject of a vacate clause in a fixed term tenancy agreement when they renegotiated their terms of tenancy. The new tenancy agreement reflected a few changes that were not available under the first tenancy agreement, including a fixed term that ran from November 1, 2018 to November 1, 2019 that protected the tenants' from receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property or a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit that would end the tenancy any earlier than November 1, 2019. Accordingly, I find the fixed term was largely for the tenants' benefit based on their own submissions concerning having a young family and operating a farm on the property.

While I appreciate the tenants may have felt pressured to renegotiate the tenancy agreement to avoid the tenancy ending they were not obligated to do enter into a new agreement and any Notice to End Tenancy the landlord may have served them would have been subject to dispute. As such, I find both parties negotiated the terms they were seeking under a new agreement and they came to an agreement. Now that the fixed term the tenants benefited from has expired, I find it would be unfair and unjust to unwind only a portion (the rental amount) of their new agreement. Therefore, I dismiss the tenants' dispute of an unlawful rent increase from November 1, 2018 onwards.

The monthly rent payable by the tenants starting November 1, 2018 was \$15,65.00 according to the new tenancy agreement but the tenants paid only \$1,300.00 for the months of November 2018, December 2018 and January 2019. I have reviewed the communications between the parties in negotiating their second tenancy agreement and I find the landlord agreed to waive entitlement to receive \$1,565.00 until February 1, 2019. As such, I order the landlord must not pursue the tenants for any rent shortfall between November 1, 2018 through January 2019.

The tenants had some success in this application and demonstrated that the landlord did collect an unlawful rent increase between November 2017 and October 2018 and I award the tenants recovery of the \$100.00 they paid for this application.

Since the tenancy is ending shortly and the tenants' obligation to pay rent has ended at this point in time, I provide the tenants with a Monetary Order to recover the unlawful rent increase and the filing fee. I provide the tenants with a Monetary Order in the sum of \$700.00 to serve and enforce upon the landlord.

### Conclusion

The tenants were partially successful and are provided a Monetary Order in the sum of \$700.00 to serve and enforce upon the landlord.

The landlord is provided an Order of Possession effective on December 31, 2019 pursuant to the 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 6, 2019 that the tenants have accepted. The tenants are at liberty to end the tenancy earlier than December 31, 2019 by giving the landlord at least 10 days of written notice, as provided under section 50 of the Act. The tenants also remain entitled to compensation provisions for receiving a 2 Month Notice, as provided under sections 50 and 51 of the Act.

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: December 04, 2019

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Residential Tenancy Branch