



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

CNE DRI FFT FFL MNRL OPC

### Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlords’ for:

- an order of possession pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$5,800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant’s wife attended the hearing as well but did not give any evidence.

The parties each confirmed that they served the other(s) with their notice of dispute resolution proceeding package and supporting evidence. I deem that all parties have been served in accordance with the Act.

### Preliminary Issue – Joinder

The parties testified that another application between the parties (file number 31062283) is scheduled to be heard on March 17, 2020. This application was brought

by the landlord seeking an order of possession for unpaid rent, and a monetary order for \$1,400 representing compensation for January 2020 rent. The parties consented to this application being adjudicated at the present hearing.

As such, pursuant to Rule of Procedure 2.10, I order that file 31062283 be joined with the present files and be adjudicated at this hearing.

### **Preliminary Issue – Tenant has Vacated the Rental Unit**

The parties agree that the tenant vacated the rental unit as of January 30, 2020. All parties agree that it is no longer necessary to determine if the Notice is valid or if the landlords are entitled to an order of possession. Accordingly, and by consent, I dismiss the landlords' applications for an order of possession, and the tenant's application to cancel the Notice. The balance of this decision will address the remaining issues of the parties.

### **Preliminary Issue – Amendment of Tenant's Claim**

At the hearing, the tenant sought to amend his claim to seek compensation for unpaid wages in connection with the tenancy. He testified that he was out of the country from December 10, 2019 to January 20, 2020, and could not, therefore, amend his claim prior to the hearing (by the time he returned it was too late to do so).

Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlords testified that they could not be expected to anticipate the tenant's new claim. They argued that this matter is better dealt with in small claims court or another forum.

I make no finding as to what proper forum for the tenant is to have this claim adjudicated. However, I agree with the landlords that they could not have reasonably anticipated the tenant's new claim in advance of the hearing. I find that to allow the amendment would deprive the landlords of their entitlement to be adequately prepared to defend themselves against the claim. As such, I decline to allow the amendment sought by the tenant.

### **Issues to be Decided**

Are the landlords entitled to:

- 1) a monetary order for \$7,200; and
- 2) recover their filing fee from the tenant?

Is the tenant entitled to:

- 1) an order setting aside the landlords' rent increase; and
- 2) recover his filing fee from the landlords?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into an oral tenancy agreement. The parties could not agree on the date the tenancy started. The landlords testified it was 2015 or 2016, and the tenant testified that it was in the summer of 2017. Given the lack of certainty of the landlords' evidence, and the certainty of the tenant's, I find the tenant's evidence as to the start of the tenancy to be more likely to be true. I find that the tenancy started in the summer of 2017.

The parties disagree on the terms of the tenancy.

The landlords testified that the parties agreed that monthly rent would be \$1,400 (including utilities) and that they would give the tenant a \$600 per month reduction of rent if the tenant drove their daughter to school every day.

The tenant testified that the parties agreed that monthly rent was \$800, and that the landlords were supposed to pay him for driving their daughter to school every day but did not.

The parties agreed that tenant did drive the landlord's daughter to school. The landlords testified he did this from the start of the tenancy until November 2019. The tenant testified he started driving the daughter in the late fall or early winter 2017 and stopped December 5, 2019. He testified that he stopped because he was leaving the country and would be unable to drive the landlord's daughter.

The tenant testified he left the country on December 10, 2019 and returned January 20, 2020.

The parties agree that no security deposit was paid.

In support of their testimony, the landlords entered a letter from the tenant's daughter (who also lived in the rental unit with the tenant) in which she wrote:

Prior to moving into the [the rental unit] a verbal agreement was made by the landlords [names redacted] with [the tenant and his daughter] that rent would be reduced to a lower rate if we, the tenants dropped and picked up the landlords daughter.

My father [the tenant] and I, [the tenant's daughter], understood the terms and conditions before moving in and did in fact give verbal consent to move forward with this agreement. Since dropping and picking up the landlord's daughter, the rent has been reduced to \$800 as per the agreement knowing the regular price for this two bedroom basement would have been \$1200 plus \$200 for utilities, coming out to be \$1400.

The tenant denied that this was true. He argued that, at the start of the tenancy, his daughter was underaged and was not a tenant, and that she was bribed by the landlords to write this. The tenant testified that his daughter was born in 1998. I note that this suggests she was 19 at the time the tenancy was entered into.

The landlords denied bribing the tenant's daughter.

The landlord testified that two other children of the tenant came to live with him in February 2019. The landlord testified that they agreed his children could live with him temporarily (until May or June 2019) so they could find a job. The testified that they did not agree to allowing them to live in the rental unit indefinitely.

The tenant agreed that two of his children came to live with him, and that they did not place any restrictions as to the duration his children could stay.

The landlords testified that their utility bill increased significantly during the time the tenant's children moved in. They did not submit any documents supporting this assertion.

The landlords testified, and the tenant agreed, that the tenant did not pay any rent for the month of January 2020. The tenant did not explicitly state the reason why this was the case, but in the course of making his submissions, he stated that he bought a paint sprayer for the landlords which he has not been compensated for. I understand that this is the reason he did not pay January 2020 rent. He provided no documentary proof of the value of this item, or that he provided it to the landlords. The landlords denied ever having received the item.

The landlord claims for \$7,200, as follows:

January rent	\$1,400.00
No rent reduction for driving the landlord's daughter (3 months)	\$1,800.00
Increased rent for tenant's children staying at rent unit (\$200 per month each for 10 months)	\$4,000.00
<b>Total</b>	<b>\$7,200.00</b>

The tenant argued that the rent reduction does not exist, and that monthly rent has always been \$800. He argued that any increase to this amount (be it for his children staying with him, or in relation to not driving the landlords' daughter to school) represents an illegal increase in his rent.

## **Analysis**

### **1. Terms of Rental Agreement**

I find that monthly rent was \$1,400 and the parties agreed that the tenant may deduct \$600 per month if he drives the landlords' daughter to school.

I rely on the tenant's daughter's letter of December 15, 2019 when arriving at this conclusion. The tenant was not able to provide me with any reasonable basis to doubt the contents of the letter. I do not find his allegation that the landlords bribed her to be credible. I do not find the tenant's daughter's age to be relevant in assessing her credibility as a witness.

Additionally, I do not find the tenant's version of the terms of the tenancy agreement to be reasonable.

The landlord admitted that he drove the landlords' daughter to school for almost three years. According to his testimony, he did not receive any compensation for so doing. I do not find this to be a reasonable. If the tenant was entitled to compensation for doing this work, as he says he is, I am uncertain why he waited three years before attempting to advance a claim for compensation.

Upon considering the circumstances, I find that the terms of the tenancy agreement set out by the landlords and corroborated by the tenant's daughter to be more probable, considering the circumstances.

## 2. Recovery of Rent Deduction

As I have found that the tenancy agreement provided for a \$600 per month rent reduction as long as the tenant drove the landlord's daughter to school, I find that the tenant is not entitled to this rent reduction in any month where he failed to do this. The landlords testified that the tenant stopped driving their daughter in November 2019. They did not provide any documentary evidence corroborating this claim. The tenant testified he stopped driving the landlords' daughter in early December 2019.

In the absence of corroborating evidence, I prefer the tenant's evidence to that of the landlords. I find that the tenant did not drive the landlords' daughter to school for most of December 2019 and all of January 2020. Accordingly, I find that he is not entitled to the rent deduction for either month. As the tenant only paid \$800 for December 2019 rent, I order that he pay the landlords \$600, representing the balance of rent owed. I address the issue of January 2020 rent below.

## 3. January Rent

Section 26 of the Act states:

### **Rules about payment and non-payment of rent**

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Per the parties' testimony, I find that the tenant has failed to pay rent for January 2020. As discussed above, I find that he is not entitled to the \$600 rent reduction for January 2020. I make no finding as to whether the tenant purchased a paint sprayer (or any other item) for the landlords, as it is not relevant to the tenant's requirement to pay monthly rent in full.

As such, I find that the tenant must pay the landlords the full amount of rent for January 2020 (\$1,400).

#### 4. Additional Rent for Tenant's Children

The Act does not permit a landlord to increase rent based on the number of occupants. In fact, the "standard terms" of all tenancy agreements (including oral agreements, per section 12(b) of the Act) includes the following term:

##### **Occupants and guests**

9(1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

[...]

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

So, the landlords cannot charge additional rent for the tenants' children staying with him. They are permitted to apply to end the tenancy (as they did by issuing the Notice) or apply for damages resulting from the tenant's breach of the tenancy agreement (that is, claiming compensation for increased utilities).

I have insufficient evidence before me to determine if the number of occupants in the rental unit was unreasonable, or if by allowing his children to stay with him, the tenant breached the tenancy agreement. In any event, even if I was able to make one or either of these determinations, the landlords provided no documentary evidence as to how much damage they suffered as a result of the tenant's children staying in the rental unit (for example, copies of their utilities bills for the months the children stayed there, and from the months in the prior year, to show the difference in amounts).

Accordingly, I decline to award any amount to the landlords in connection with the tenant's children staying in the rental unit.

5. Rent Increase

As I have found that the monthly rent agreed to at the start of the tenancy was \$1,400, with a \$600 deduction for the tenant driving the landlords' daughter to school, I do not find that the landlords' application to be paid \$1,400 rent for December 2019 or January 2020 to amount to a raising of rent.

Additionally, as stated above, I have dismissed the landlord's application to increase the rent retroactively by \$200 per child.

As each party has been partially successful in their claim, I order that each shall bear the costs of their filing fees.

**Conclusion**

I order the tenant to pay the landlord \$2,000, as follows:

January rent	\$1,400.00
Arrears for December (no reduction)	\$600.00
<b>Total</b>	<b>\$2,000.00</b>

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: February 03, 2020

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Residential Tenancy Branch