



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDCT, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via XpressPost. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on October 20, 2020. Despite being served late with the landlord's documentary evidence, the tenants stated that they had no issues and were prepared to proceed with the hearing. On this basis, I find that both parties have been sufficiently served as per sections 88 and 89 of the Act. Both parties are deemed served as per section 90 of the Act.

At the outset, the tenants request for an order for the landlord to comply were discussed extensively. The tenants despite repeated attempts was only able to request that the landlord comply with a signed tenancy agreement from 2014 which states that the monthly rent is \$730.00. Both parties were cautioned that any tenancy agreement entered into by both parties was binding and as such no order is required to compel either. As such, no further action is required for this request.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants also seek a monetary claim of \$345.00 which consists of:

\$245.00	Overpayment of Rent, July 2020
\$100.00	Filing Fee

The tenants provided written details which states,

*Landlord demanded another \$245 after paying \$730, as stated on the rental agreement. We paid to avoid conflict hoping we could work it out ourselves, but that is not the way things have been unfolding.*  
[reproduced as written]

During the hearing the tenant provided incoherent and inconsistent testimony, however the tenant did argue that an overpayment of rent for \$245.00 was paid to the landlord for July 2020 and that the tenants seek return of the overpayment. The tenant has submitted in support of this claim a copy of a signed tenancy agreement which states that monthly rent is \$730.00.

The landlord disputed this claim arguing the signed tenancy agreement began in 2014 when the monthly rent was \$730.00. The landlord stated that in 2015 the tenants had an additional person move into the rental unit and a new rent was established at \$975.00 per month. Both parties confirmed that the tenants paid rent of \$975.00 for approximately 5 years from 2015 to 2020. The landlord has clarified that she had recently purchased the rental property and has submitted a copy of an Addendum to the landlord's "Contract of Purchase and Sale dated April 14, 2020". The landlord stated that an attached "Appendix "A"" states in part that the original owner has stated that the monthly rent is \$975.00 and that no security deposit was paid. The landlord also refers to a submitted copy of a e-transfer payment from the tenant to the landlord for \$975.00 in May 2020. The landlord stated that this is proof that the tenant has been regularly

paying \$975.00 for monthly rent. The landlord also referred to a copy of an email statement from the previous owner who states,

To Whom this may concern

The rental price for ...was \$975.00 when G.K moved into the mobile home in 2016 \$975.00 was paid for 4 years. Please contact me...for confirmation if needed.  
[reproduced as written]

The landlord stated that this statement was provided to the landlord by the previous landlord on October 21, 2020.

The tenant confirmed in his direct testimony that he has been paying \$975.00 for the last 5 years. The tenant clarified that his monthly rent is \$730.00 and that he does not know what verbal agreement, G.K. has with the previous landlord. The tenant, S.K. stated that the previous landlord was his step-father. The tenants stated that G.K. was his guest and not a tenant.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that the tenant has failed to establish a claim for the \$345.00 monetary claim. Despite providing a copy of a signed tenancy agreement which states that rent began at \$730.00 in 2014, the tenants have failed to provide sufficient evidence to satisfy me that an overpayment of \$245.00 was made for July 2020. The landlord has provided clear and concise testimony that the tenants began their tenancy in 2014 and the monthly rent was \$730.00; the landlord provided clear and concise testimony that upon allowing an additional third party to live in the rental unit a verbal agreement was made for the rent at \$975.00. The landlord also provided a copy of an emailed statement from the previous landlord who stated,

To Whom this may concern

*The rental price for ...was \$975.00 when G.K moved into the mobile home in 2016 \$975.00 was paid for 4 years. Please contact me...for confirmation if needed.*

[reproduced as written]

The landlord submitted a copy of the Addendum to the landlord's "Contract of Purchase and Sale dated April 14, 2020". The landlord stated in an attached "Appendix "A" which states in part that the original owner has stated that the monthly rent is \$975.00 and that no security deposit was paid and a copy of an etransfer payment from the tenant to the landlord of \$975.00 for May 2020.

On all these factors, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants that the tenants' monthly rent is \$975.00 and that the tenants have failed to provide sufficient evidence of an overpayment of rent.

### Conclusion

The tenants' application is dismissed without leave to reapply.

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: October 29, 2020

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Residential Tenancy Branch