



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the tenant's 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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant, J.M. attended the hearing via conference call as an agent for the named tenant, G.H. and provided affirmed testimony. The landlord attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and two documentary evidence files via Canada Post Registered Mail on January 15, 2021. The tenant also stated that she submitted two additional evidence files to the Residential Tenancy Branch on the morning of the hearing prior to the scheduled start time. The tenant stated that these two documents were emailed to the landlord prior to the hearing. The landlord confirmed receipt of the notice of hearing package and the initial 2 documentary evidence files as claimed. The landlord disputes that she did not receive the 2 additional late evidence submission by the tenant via email. The landlord confirmed that no documentary evidence was submitted by the landlord.

I accept the affirmed evidence of both parties and find that both parties were properly served with the notice of hearing package and the initial 2 documentary evidence files as per sections 88 and 89 of the Act. The landlord has disputed that no additional evidence was served by the tenant. On the late submission of the tenant's 2 additional documentary files, I find that the tenant has served these late contrary to Rule of Procedure 3.3 in that evidence must be received by the other party and the Residential Tenancy Branch not less than 14 days before the hearing. I find based upon the affirmed evidence of both parties that the tenant failed to follow the Rules of Procedure regarding the service of evidence and as such the late evidence submission is prejudicial to the respondent. As such, the additional 2 documentary evidence files are excluded from consideration in this hearing.

#### 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 seek monetary compensation of \$3,250.00 which consists of:

\$3,150.00	Compensation, illegal rent increase recovery \$300.00 X 10.5 months
\$100.00	Filing Fee

The tenants provided written details which states:

*Our original tenancy starting Sep 2019 was with D. and R.J., monthly rent of \$1,000.00 per month. The property was purchased by S.P., possession date January 16, 2020. She stated rent of \$1000.00 per month would not be acceptable. At that time, January 16, 2020, my husband, tenant no. 2, was suffering from pneumonia and we were unable to look for other tenancy. Also, Ms. P. was my direct supervisor at work. We felt we had no other choice but to pay the increased rent.*

[reproduced as written]

The tenants clarified that their original tenancy began at this location in September 2019 with a monthly rent of \$1,000.00 with the old landlord. The tenants stated that the named landlord who was her direct supervisor at work purchased the home in January 2020. The tenants claim that the landlord told the tenants that monthly rent of \$1,000.00 was not acceptable to her and offered a new tenancy agreement for a monthly rent of \$1,300.00. The tenants signed the new agreement which began on January 16, 2020 for a monthly rent of \$1,300.00.

The tenants seek compensation of \$3,150.00 for return of monies paid for an illegal rent increase. The tenants seek recovery of \$300.00 per month for 10.5 months for an illegal rent increase paid to the landlord. The tenants claim that they had no choice to agree to the new tenancy agreement as the named landlord was also the tenant's direct supervisor at work. The tenants stated that although the landlord did not make any physical or verbal indications to them that the agreement was to be agreed to, the tenants "felt" that they had no choice.

The landlord disputes the tenants' claims arguing that prior to the purchase of the home the landlord verbally negotiated with the tenants and in order for her to purchase the home she would require a monthly rent of \$1,400.00 to be paid by the tenants. The landlord stated that she was told by the tenants that the monthly rent had to be \$1,200.00. The landlord stated that after some negotiations the rent was agreed at \$1,300.00 by both parties. The tenants stated that the negotiations took place prior to the closing of the purchase of the home.

### Analysis

Section 42 of the Act speaks to timing and notice of rent increases which states in part, A landlord must not impose a rent increase for at least 12 months after the tenants' rent has previously been increased. A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and be in the approved form.

In this case a new tenancy agreement began on January 16, 2020 as confirmed by both parties. The monthly rent was \$1,300.00.

Section 43 of the Act speaks to the amount of a rent increase and states in part,

A landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on application under subsection (3) or agreed to by the tenant in writing.

In this case the landlord provided undisputed affirmed testimony that a verbal negotiation took place between the two parties to determine the new monthly rent. The landlord stated that she began at \$1,400.00 per month and the tenants had countered at \$1,200.00. The landlord stated that a mutual agreement was made for monthly rent at \$1,300.00. The landlord stated that the subsequent new tenancy agreement was signed and entered into on January 16, 2020.

Section 43 (2) states in part a tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

I find on a balance of probabilities based upon the evidence of both parties that despite the tenants' claims that they were "forced" or "did not have a choice" into signed the new tenancy agreement, the tenants have failed to provide sufficient evidence to satisfy me that no choice given to them. The tenants stated that the landlord did not make any physical or verbal indicators to them that the tenancy agreement must be signed. The landlord also provided undisputed affirmed testimony that verbal negotiations took place to determine a monthly rent and finally both parties entered into and signed the new tenancy agreement dated January 16, 2020 agreeing to the monthly rent of \$1,300.00. I find that although not on the approved form, the new landlord has a right to have an updated tenancy agreement entered into with the landlord as opposed to using the previous landlord's agreement and issuing a notice of rent increase. A verbal negotiation took place and an offer and acceptance was made for a monthly rent of \$1,300.00 which resulted in a new tenancy agreement being signed between the two parties. Based upon the above reasons, I find that the tenants have failed to establish a claim for compensation for an illegal rent increase.

### Conclusion

The tenants' application is dismissed.

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: May 19, 2021

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Residential Tenancy Branch