



# 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 was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on May 27, 2021 or May 28, 2021 the Dispute Resolution Package and evidence the Tenant to the Residential Tenancy Branch in May of 2021 were personally served to the Landlord. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On June 28, 2021 the Tenants submitted additional evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was personally served to the Landlord on June 29, 2021 or June 30, 2021. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On August 06, 2021 the Tenants amended their Application for Dispute Resolution to by amending their service address. The female Tenant stated that the Amended Application was personally served to the Landlord on August 08, 2021. The Landlord acknowledged receiving this document and the Application for Dispute Resolution was amended accordingly.

On August 06, 2021 the Tenants submitted additional evidence to the Residential Tenancy Branch. The female Tenant stated that this was personally served to the Landlord on August 08, 2021. The Landlord denied receiving this evidence. As the

Landlord did not acknowledge receiving this evidence, it was not accepted as evidence for these proceedings. The hearing was not adjourned for the purposes of allowing the Tenants to re-serve this evidence, as it was not particularly relevant to the issues in dispute at these proceedings.

On September 15, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that on September 15, 2021 this evidence was served to the email address provided by the Tenants on the Application for Dispute Resolution. He stated that he sent the evidence three times and that it “bounced back” on each occasion.

The Landlord was asked to provide the email address he used to serve his evidence and he provided the female Tenant’s email address, with the exception that he testified the address has a “dash” in it. The Tenant’s email address has an “underscore” in it. The difference between a “dash” and an “underscore” was discussed and the Landlord insisted that the address had a horizontal line in the middle of the printing, rather than a horizontal line at the bottom of the printing. On the basis of this information, I find it likely that the Landlord sent his evidence package to an incorrect email address. As the evidence was not served to the Tenants by email, it was not accepted as evidence for these proceedings. The hearing was not adjourned for the purposes of allowing the Landlord to re-serve this evidence, as it was not particularly relevant to the issues in dispute at these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter #1

During the hearing the female Tenant stated that she believed she had amended the Application for Dispute Resolution on August 06, 2021 to include a claim to recover the security deposit.

I am unable to find anything on the Amended Application for Dispute Resolution that indicates the Tenants amended the Application for Dispute Resolution to include a claim for the security deposit. The Tenants were asked to show me where I could find such an amendment and they were unable to do so.

As the Application for Dispute Resolution has not been amended, the only issues to be determined at these proceedings will be those identified on the original Application for Dispute Resolution.

Each party retains the right to file an Application for Dispute Resolution for any issues arising out of this tenancy that has not been considered during these proceedings.

#### Preliminary Matter #2

As the rental unit has been vacated, the application for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement is not being considered.

#### Issue(s) to be Decided:

Are the Tenants entitled to a rent refund and to compensation for an electrical issue?

#### Background and Evidence:

The Landlord and the Tenants agree that:

- The tenancy began on September 01, 2019;
- The rental unit was vacated by July 31, 2021;
- Prior to September 01, 2020, the monthly rent was \$1,495.00;
- The Landlord increased the rent to \$1,533.00 on September 01, 2020;
- The Tenants paid the increased rent for nine months, beginning in September of 2020 and ending in May of 2021;
- The Tenants only paid \$1,191.00 in rent for April of 2021; and
- The Tenants withheld \$342.00 in rent from the April rent payment in an attempt to recover the "rent increase collected by the Landlord.

The female Tenant stated that:

- On August 25, 2020 the Landlord told her the rent would increase to \$1,546.00;
- She informed the Landlord, in writing, that the allowable rent increase was only \$1,533.00;
- The Tenants are seeking to recover the rent increase they paid for nine months, in the amount of \$342.00;

- On June 10, 2021 they paid the \$342.00 in rent they withheld from the April rent payment;
- The \$342.00 payment was paid in cash, for which a receipt was not provided;
- They typically pay their rent in cash;
- The Landlord often provided a receipt for rent payments but he sometimes did not provide a receipt;
- When they moved into the rental unit, they plugged their personal freezer into an outlet on the sundeck;
- A few days later they realized the food in the freezer had thawed;
- When they told the Landlord about it, he stated that he forgot to tell them that particular electrical outlet did not work;
- The Landlord repaired the outlet on the sundeck in April of 2020; and
- The Tenants are seeking \$200.00 in compensation for the food they lost when their freezer was plugged into a faulty outlet.

The Landlord stated that:

- On September 01, 2020 he gave verbal notice that the rent would be increased;
- The Tenants have never repaid the \$342.00 in rent withheld from the April rent payment;
- He always provided a rent receipt for payments made;
- The rent receipts he provided for April of 2021, which indicate \$1,546.00 was an error, as he wrote the receipts before he realized the Tenants would be withholding \$342.00 from their April rent;
- If the Tenants are missing receipts, it is because they lost them;
- The Tenants never told him that they had plugged their personal freezer into an electrical outlet that did not work;
- He is not aware of any electrical outlet in the rental unit or on the sundeck that do not work; and
- He did not repair an outlet on the sundeck during this tenancy.

### Analysis:

Rent increases were frozen by the Residential Tenancy Branch for the period between March 30, 2020 and January 01, 2022 due to the COVID-19 pandemic. As such, the Landlord did not have the right to increase the rent on September 01, 2020 without the written consent of the Tenant.

On the basis of the undisputed evidence, I find that the Tenants paid a \$38.00 monthly rent increase for nine months, beginning in September of 2020 and ending in May of 2021.

Section 43(5) of the *Residential Tenancy Act (Act)* stipulates that if a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent or otherwise recover the increase. As the Tenants paid a rent increase over a period of nine months, which the Landlord was not permitted to impose, I find that Tenants are entitled to recover that overpayment, in the amount of \$342.00.

On the basis of the undisputed evidence, the Tenants did recover the \$342.00 rent overpayment when they withheld that amount from their rent payment in April of 2021.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. As this is the Tenants application for financial compensation, they bear the burden of proving there is money owed.

I find that the Tenants have submitted insufficient evidence to establish that on June 10, 2021 they paid the Landlord the \$342.00 in rent they withheld from the April rent payment. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a receipt or an electronic communication that corroborates the Tenant's submission that it was paid or that refutes the Landlord's submission that it was not paid.

In considering the alleged repayment of \$342.00 in June of 2021, I was influenced by the absence of an electronic communication regarding the payment. I note that these parties communicated extensively by text message and that many of the text messages exchanged were submitted in evidence by the Tenants. Had the Tenants made the alleged repayment, I would suspect there would have been a text message in that regard, which could have been submitted in evidence.

In considering the alleged repayment of \$342.00 in June of 2021, I placed little weight on the Tenants' submission that Landlord often provided a receipt for rent payments; he sometimes did not provide a receipt; and he did not provide a rent receipt for the payment of \$342.00. I placed little weight on this submission because it is refuted by the Landlord, who stated that he always provided receipts. Although the Tenant submitted a series of rent receipts, which clearly show some receipts are missing, I find the Landlord's submission that they have been lost to be entirely plausible. I also find it

possible that the Tenants simply did not submit all of the receipts provided to them.

As the Tenants have submitted insufficient evidence to establish that on June 10, 2021 they paid the Landlord the \$342.00 in rent they withheld from the April rent payment, I find they have submitted insufficient evidence to show that have not been fully compensated for any rent overpayment that occurred between September of 2020 and May of 2021. I therefore dismiss their application for a rent refund of \$342.00.

I find that the Tenants have submitted insufficient evidence to establish that the lost food as a result of plugging their personal freezer into a faulty outlet. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an electronic communication between the parties, that corroborates the Tenants' submission that their freezer was plugged into a faulty electrical outlet or that refutes the Landlord's testimony that all the outlets were working properly.

As the Tenants have failed to meet the burden of proving they suffered a loss as a result of a faulty electrical outlet, their application for compensation of \$200.00 is dismissed.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution 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: September 22, 2021

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Residential Tenancy Branch