



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 08, 2021 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For return of the security deposit
- For reimbursement for the filing fee

The Tenant appeared at the hearing. The Tenant called K.W., their wife, as a witness at the hearing. The Landlord appeared at the hearing with P.D., their wife, who spoke on behalf of the Landlord during the hearing (the “Landlords”). I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony provided. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to return of the security deposit?
3. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenant sought a total of \$6,046.22 as compensation for the following:

- Return of the \$500.00 security deposit
- Compensation for an illegal rent increase from \$1,050.00 to \$1,140.00
- Compensation due to the failure of the Landlord to provide or compensate the Tenant for cable and wireless internet
- Reimbursement for the filing fee

### ***Security deposit***

The Tenant submitted a written tenancy agreement. The agreement is between B.S. and P.S., as landlords, and the Tenant. The tenancy started December 26, 2015 and was for a fixed term ending December 31, 2016. The tenancy then became a month-to-month tenancy. Rent in the agreement is \$1,050.00 per month due on the first day of each month. The Tenant paid a \$500.00 security deposit. The agreement is signed by all three parties.

The Tenant testified that B.S. and P.S. were the previous owners of the rental unit. The Tenant agreed the Landlord purchased the rental unit April 24, 2019. The Tenant testified that no new tenancy agreement was completed with the Landlord and the prior tenancy agreement simply carried on.

The Landlords testified that they purchased the rental unit April 24, 2019. The Landlords testified that they were not provided a copy of the tenancy agreement between B.S., P.S. and the Tenant. The Landlords testified that the Contract of Purchase and Sale states that rent at the time the rental unit was purchased was \$1,150.00 per month. The Landlords agreed no new tenancy agreement was completed with the Tenant. The Landlords testified that rent was \$1,150.00 when they

purchased the rental unit but that it was reduced to \$1,140.00. The Landlords agreed the Tenant paid a \$500.00 security deposit and that this was transferred to them when they purchased the rental unit.

The parties agreed the tenancy ended June 06, 2021.

The Tenant testified that the Landlord has not returned the \$500.00 security deposit. The Landlord had submitted an End Of Tenancy Final document showing the Tenant signed this document acknowledging receipt of compensation of \$912.00 and the \$500.00 security deposit on June 06, 2021. The Tenant testified that they signed this document prior to receiving the money and that the Landlord only provided them the \$912.00 and not the \$500.00. K.W. was called as a witness and testified that the Landlord only provided \$912.00 to the Tenant and never returned the \$500.00 security deposit at the end of the tenancy.

The Landlords testified that the \$500.00 security deposit was returned to the Tenant as stated in the End Of Tenancy Final document.

### ***Rent increase***

The Tenant testified that the Landlord illegally increased their rent from \$1,050.00 to \$1,140.00 when they purchased the rental unit. The Tenant relied on the written tenancy agreement to show that they were paying \$1,050.00 in rent when the Landlord purchased the rental unit. The Tenant submitted that the Contract of Purchase and Sale showing rent was \$1,150.00 has been tampered with.

The Landlords testified that they never increased rent and in fact decreased it to \$1,140.00 and relied on the Contract of Purchase and Sale.

### ***Cable and wireless internet***

The Tenant testified that cable and wireless internet were included in the tenancy agreement; however, when the Landlord took over as landlord, they refused to provide these services and the Tenant had to pay for cable and wireless internet themselves.

The Landlords testified that the parties verbally agreed that rent would not be increased and would be reduced to \$1,140.00 so that the Tenant could get their own cable and

wireless internet. The Landlords pointed out that the Tenant lived in the rental unit for two years after they became landlord and never complained about this issue.

In reply, the Tenant pointed out that there was no signed agreement or document showing the parties came to an agreement as stated by the Landlords. The Tenant testified that they did not know their rights and so went along with the Landlord increasing rent to \$1,140.00 and not paying for cable or wireless internet.

### ***Evidence***

The Tenant submitted the following relevant documentary evidence:

- Rent receipts for rent payments of \$1,140.00
- Written tenancy agreement
- Telus bills
- Text messages between the Tenant and Landlord
- Written submissions
- Two Month Notice
- End of Tenancy Notices
- End of Tenancy Final document
- Tenant Complaint for Compensation
- Phone records

The Landlord submitted the following relevant documentary evidence:

- Mutual Agreement to End a Tenancy
- Contract of Purchase and Sale Addendum
- Written tenancy agreement
- End of Tenancy Final document
- End of Tenancy Notice
- Two Month Notice (page 1 and 2)
- Written submissions

## Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### ***Security deposit***

Section 38 of the *Residential Tenancy Act* (the “*Act*”) governs return of a security deposit held at the end of a tenancy.

The parties disagreed about whether the \$500.00 security deposit was returned to the Tenant. Based on the End of Tenancy Final document signed by the parties, I am satisfied it is more likely than not that the Landlord returned the \$500.00 security deposit to the Tenant on June 06, 2021 because both parties signed the document stating:

Damage deposit amount paid: \$500 Canadian dollars paid in cash

I find it unlikely that the Tenant signed the End of Tenancy Final document prior to actually receiving the payments noted in it because acknowledgement of receipt of the payments noted in it is the very purpose of the document. The Tenant has not provided sufficient compelling evidence to overcome the End of Tenancy Final document signed by the Tenant June 06, 2021 stating they received the \$500.00 security deposit back.

The request for return of the security deposit is dismissed without leave to re-apply.

### ***Rent increase***

Part 3 of the *Act* governs rent increases imposed during a tenancy.

The parties disagreed about whether the Landlord increased rent when they purchased the rental unit and became the landlord.

The written tenancy agreement between B.S., P.S. and the Tenant shows that rent at the start of the tenancy was \$1,050.00 per month due on the first day of each month. The tenancy agreement started in 2015 and was signed in 2015.

The Tenant submitted a text message between them and the Landlord in which the Landlord states that their real estate contract stated that the Tenant's rent was \$1,200.00.

The Landlord submitted a Contract of Purchase and Sale Addendum dated April 24, 2019 stating that the Tenant's rent was \$1,150.00. I acknowledge that there are lines on the Contract of Purchase and Sale Addendum; however, these are not initialed and therefore I am not satisfied they are meant to show changes to the document. The document is signed by B.S., P.S and the Landlords.

I find the Contract of Purchase and Sale Addendum to be the most reliable evidence of the Tenant's rent amount when the Landlord purchased the rental unit because it is more recent than the written tenancy agreement from 2015 and the statement about the Tenant's rent amount is part of a contract between B.S., P.S. and the Landlords. I do not find the written tenancy agreement from 2015 to be reliable evidence of what the Tenant's rent amount was four years later in 2019.

Given the above, I find rent at the time the Landlord purchased the rental unit was \$1,150.00. There was no issue that the Tenant paid the Landlord \$1,140.00 in rent and this is shown in the receipts submitted. I find there was no rent increase imposed by the Landlord let alone an illegal rent increase. The request for compensation in relation to an illegal rent increase is dismissed without leave to re-apply.

### ***Cable and wireless internet***

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The parties disagreed about what occurred in relation to cable and wireless internet when the Landlord purchased the rental unit. I find the documentary evidence supports the Landlord's version of events because it shows that rent was \$1,150.00 when the Landlord purchased the rental unit and reduced to \$1,140.00, which is the amount the Tenant paid in rent once the Landlord became the landlord. Further, as stated above, I find that the documentary evidence tends to support the Landlord's version of events in relation to this tenancy over that of the Tenant's and therefore I find the Landlord's testimony more reliable and credible than the testimony of the Tenant. I am satisfied it is more likely than not that the parties agreed the Tenant's rent would not be increased and would be reduced to \$1,140.00 and that the Tenant would pay for their own cable and wireless internet. It was open to the parties to change the terms of the tenancy agreement as it related to cable and wireless internet and I am satisfied they did. The Tenant is not now entitled to compensation for cable and wireless internet payments. The request for compensation in relation to cable and wireless internet is dismissed without leave to re-apply.

### ***Filing fee***

Given the Tenant was not successful in the Application, the Tenant is not entitled to reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

### **Conclusion**

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 20, 2021

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Residential Tenancy Branch