



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC RPP FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on August 25, 2023. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both the Landlords and the Tenants attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each others' evidence. No service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Tenants applied for the return of their personal property. However, the Tenants were aware that these items were disposed of a long time ago, and the Landlord confirmed these items were disposed of. As such, I find this issue is moot, and is hereby dismissed, without leave to reapply. The only recourse available to the Tenants is an application for monetary compensation for the items that they allege were illegally disposed of. However, the Tenants did not apply for compensation for that, so that would require a separate application.

### Issue(s) to be Decided

- Is the Tenant entitled to compensation for loss or money owed?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties agree that the Tenants resided in the rental unit for many years and the tenancy ended around August 1, 2021. Both parties also agreed that the Landlords collected, and still hold the security deposit, in the amount of \$1,000.00.

The Tenants stated they are seeking the following:

- 1) \$2,000.00 – Double security deposit

The Tenants stated they provided their forwarding address to the Landlord, in writing, by leaving it in the Landlord's mailbox sometime in October or November 2021. The Tenants were vague about the dates. The Landlord denies getting this from the Tenants.

- 2) \$5,000.00 – Illegal rent increase

The Tenants stated that they are seeking this money back that they paid for a rent increase in April 2016, whereby the Landlord increased rent by \$50.00. The Tenants stated that the Landlord never gave them a proper rent increase form, and the Tenants were aware that the rent increase was not lawful. The Tenants stated that the Landlord told them they would sell the house if they could not raise the rent. The Tenants provided no breakdown of the months they "overpaid" this rent increase, and they did not explain how \$5,000.00 was calculated.

The Landlord stated that he did provide a lawful rent increase, in writing, in April 2016, and he stated that it was less than the allowable rent increase for 2016 (2.9%). The Landlord denies threatening the Tenants in order to impose the rent increase, and stated that the Tenants were seemingly okay with the rent increase, since they paid it for over 5 years without any issue.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find the Tenants have failed to sufficiently demonstrate that they provided their forwarding address, in writing, to the Landlord. The Tenants were unclear on the date they served the Landlord and they also failed to provide any proof of service. The Landlord denied receipt of the forwarding address. Since the forwarding address was not properly provided from the Tenants to the Landlord, in writing, I dismiss the Tenant's application to have any remaining amount of the deposit returned to him, without leave to reapply.

I find it important to note the following portion of the *Act*:

Landlord may retain deposits if forwarding address not provided

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing **within one year after the end of the tenancy**,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Since it is well over 1 year after the end of the tenancy, the Landlord may retain the security deposit.

Next, I turn to the rent increase issue.

Part 3 of the *Act* and Policy Guideline 37 to the *Act* explains the requirements a landlord must follow in order to affect a legal rent increase.

The *Act* requires a landlord to give to a tenant a notice of rent increase in the approved form at least three months before the effective date of the increase. The *Act* also requires that a landlord must not impose a rent increase that is more than the allowable limit which is calculated in accordance with the regulations, unless ordered by the director or agreed to by the Tenant in writing.

I note that *Residential Tenancy Policy Guideline 37 - Rent Increases* provides that “payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount”.

In this application, the Tenants are seeking to recover money they paid (extra \$50.00 per month over 5 years), over and above their base rent of \$1,950.00.

I note the Tenants indicated that they were aware the rent increase was unlawful, as it was not in writing and they felt pressured to accept the rent increase in order to avoid eviction. The Tenants are relying on the fact that they were not done in accordance with the Act as a basis to recover these “overpayments”.

The Tenants were vague in the hearing, and did not point to relevant parts of the evidence. It is not clear whether the Landlord used the approved form or not. That being said, I am satisfied the dollar value of the rent increase was within the allowable range for 2016. I further note this was the only rent increase imposed over many years. It appears that at this time, the parties had verbal discussions regarding increasing rent. Despite being aware that the rent increases were above the allowable amount the Tenants did not apply to dispute the rent increases until the relationship became strained due to issues surrounding a 2-Month Notice. The Tenants failed to point to any evidence that they clearly communicated to the Landlord that the rent increase in 2016 was improper or unacceptable.

It appears the Landlord operated under the assumption that the rent increases were mutually acceptable, and I find this assumption was reasonable, given the totality of the situation (lack regular annual rent increases, paying the rent increase for 5 years, without clearly articulating it being an issue). It seems likely that had the Landlord known the Tenants took issue with how the rent increases were given, he would have done them annually, on the approved form, in the approved amount. I also accept that, had the Landlord done this all along from the start of the tenancy, the Tenants would have ended up paying many thousands of dollars more in rent than they did.

### Estoppel by Convention

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly.

I find it important to note a Supreme Court of Canada decision, *Ryan v. Moore*, 2005 2 S.C.R. 53. Below is a relevant excerpt:

*59 After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:*

- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of silence (impliedly).*
- (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.*
- (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.*

Based on the above, I find as follows:

- (1) The Tenants were aware the rent increase was not done properly in 2016, and did not explain whether they raised the issue with the Landlord or filed to dispute the increase with our office. I find this created a mutual assumption which the Landlord relied upon.
- (2) The Landlord relied on this shared assumption, and did not pursue annual rent increases each year.
- (3) I find it would be both unjust and unfair for the Tenants to depart from this mutual assumption as the Landlord relied upon it to not pursue regular annual increases. Ultimately, had the Landlord pursued annual rent increases since the start of the tenancy, the Tenants would have had to pay more rent than they did.

I therefore find the Tenants are estopped from claiming compensation for the "illegal rent increases" in 2016.

Conclusion

The Tenants' application is dismissed, in full, without leave.

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: August 31, 2023

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Residential Tenancy Branch