



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNDCT, FFT**

### **Introduction**

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (Act) for:

1. An Order for compensation for a monetary loss or other money owed under section 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

Landlord G.S. attended the hearing for the Landlords.

Tenant E.V.S. attended the hearing for the Tenant.

### **Service**

I find that the Landlords are deemed served with the Proceeding Package, in accordance with section 90(a) of the Act, on November 29, 2022, by registered mail in accordance with section 89(1)(c) of the Act, the fifth day after the registered mailing. The Landlords confirmed receipt.

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlords in accordance with section 88 of the Act.

The Landlords testified that they served their evidence by registered mail on February 9, 2023. The Landlords uploaded the Canada Post customer receipt attesting to this service. Based on the submissions before me, I find that the Landlords' evidence was served to the Tenant in accordance with section 88 of the Act.

### Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on October 12, 2004. The fixed term ended on October 11, 2005, then the tenancy continued on a month-to-month basis. Monthly rent was \$1,370.00 payable on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$500.00 were collected at the start of the tenancy. The Landlords returned both deposits and interest to the Tenant totalling \$1,138.95 in August 2020.

This hearing was reconvened after it was adjourned on August 15, 2023. This matter began as a repeated application. A decision was rendered for the primary file number (noted on the cover sheet of this decision), and that matter concluded. This decision should be read in conjunction with the Interim Decision issued on August 16, 2023.

The main reason for the adjournment was to allow time for the Tenant to retain an advocate who would assist him in presenting his case. The Tenant stated he suffers from brain fog, a consequence of chemotherapy treatment in 2019. The Tenant uploaded a letter from his doctor explaining his limitations. He stated that he made every effort possible to secure an advocate; however, he was not successful.

I have reviewed all the Tenant's uploaded evidence.

The Tenant's notice sets out that the Tenant is seeking global compensation of \$30,000.00 for an overpayment of hydro on the residential property. The original tenancy agreement stated that the Tenant was responsible for 'Hydro – tenant supplies hydro for well pump and septic pump'. As time went on, more demands for hydro occurred because the Landlords' family moved onto the property, and a commercial landscaping or pressure washing company rented property from the Landlords and allegedly used the hydro paid by the Tenant.

The Tenant testified that the property was being irrigated for hedging for which the Landlords installed an extra tank. The Landlords rented property to a commercial landscaping business that had almost 30 vehicles. This commercial company used extra water, and as the water usage went up, so did the utilities bills.

The Tenant stated that the Landlords ran a hobby farm, they had the commercial business running, and the Landlords moved into a multi-purpose garage. The Tenant listed the extra activities which increased the usage of hydro.

- All sewage was dumped into the Tenant's chambers, then he would have to pay to pump all the grey water.
- There was increased water usage from all the extra businesses, and the Tenant paid to operate the pump house.

When construction activities occurred on the property, the Landlords paid the Tenant a portion of the hydro.

The Tenant said he complained about the hydro usage, and shortly after he received a rent increase. The Tenant said the Landlord took \$13.00 off the rent to cover the extra hydro use.

Landlord G.S. testified that this tenancy began in October 2004. In 2008 to 2011, the Landlords imposed rent increases but reduced the rent increases to account for the hydro costs to the Tenant.

The Landlords calculated the annual costs of the septic pump and the well pump if each item ran 24 hours per day. The Landlords uploaded manuals for each pump demonstrating their power usage. The Landlords argued that neither of these pumps operated for 24 hours per day.

The Landlords' Excel spreadsheet shows:

- The amount of hydro costs for each pump using the 2020 hydro costs. In previous years the hydro costs were less; and,
- The amount of rent the Tenant did not pay because of the rent reductions imposed by the Landlords.

From 2012 to 2019, the Landlords did not impose rent increases on the Tenant because they understood that it created a financial hardship on the Tenant. As a comparison, the Landlords further calculated the additional rent the Tenant would have paid if the Landlords had imposed the allowable rent increases over those years. The Tenant would have paid an additional amount of \$21,162.12.

The Landlords used a drip irrigation method to water their gardens as opposed to a sprinkler method, and the Landlords argued that they did not water their gardens 365 days in the year. Watering happened in the spring and summer months mostly.

In response the Tenant newly stated his claim was also for a storage room that the Tenant rented of which it leaked for approximately three years.

The Tenant stated that not only was the water pump running all the time, but also the pumps were replaced many times.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Residential Tenancy Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, *"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due."* This section must be read in conjunction with section 67 of the Act.

Policy Guideline #16 asks me to analyze 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 Tenant believes that his hydro costs over the years of his tenancy were excessively increased due to use beyond just his own. The Tenant gave verbal testimony that the Landlords had water and septic demands from their own commercial contracts, and their gardening practices on the residential property.

The Landlords provided testimony and documentary evidence that rent increases were reduced when increases were imposed from 2008 to 2011. Beyond those years, the Landlords did not impose rent increases because they understood that the financial demand on the Tenant was too harsh.

In a monetary claim such as this, the Tenant must first prove that the Landlords have failed to comply with a term of the Act, regulation, or tenancy agreement. The Tenant has not satisfied this element of my analysis, and I find the Landlords have not breached a term of the Act, regulation, or tenancy agreement. As the Tenant has not substantiated his claim, I dismiss his application.

As the Tenant was not successful in his claim, I do not grant him recovery of the application filing fee.

### Conclusion

The Tenant's application is dismissed in its entirety.

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 14, 2023

---

Residential Tenancy Branch