



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MND, MNR, FF, DRI, RPP*

### **Introduction**

This hearing dealt with applications by both the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, cost of cleaning, repairs, utilities and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The tenant applied for a monetary order for the return of overpaid rent, compensation pursuant to a notice to end tenancy for landlord's use of property, return of an illegal rent increase, return of his personal property, for the security deposit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover loss of income, utilities, cost of repairs, cleaning and the filing fee? Is the landlord entitled to retain the security deposit? Is the tenant entitled to compensation, the return of his security deposit and the recovery of the filing fee?

### **Background and Evidence**

The landlord testified that the tenancy started on August 01, 2008 for a fixed term of one year. The tenancy agreement shows that the parties selected an option in the agreement that allowed the tenancy to continue on a month to month basis, at the end of the term. Despite several requests to sign an extension of the lease in August 2009, the tenant did not and the tenancy simply continued on as a month to month tenancy.

Approximately one year into the month to month tenancy, on June 06, 2010, the agent for the landlord sent the tenant a letter requesting him to enter into a fixed term of one year ending on August 03, 2011 at an increased rent of \$3,450.00. The letter also stated that in the event the tenant was not willing to commit to an extension of the lease for a fixed term of one year, the tenancy would end on July 31, 2010. The tenant stated

that he was not in a position to move at such short notice and therefore he had no option other than to agree to sign the contract and pay the increased rent.

The tenant stated that the rent increase was not in keeping with the percentage of increase as mandated by the Residential Tenancy Branch and is claiming the return of the amount of the increase, that he paid for the last nine months of tenancy.

On May 19, 2011, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property with an effective date of July 31, 2011. On May 21, the tenant served the landlord with a ten day notice to end tenancy and moved out on May 31, 2011. Both parties agreed that the post dated rent cheques for May and June were cashed by the landlord. The tenant stated that he did not receive any compensation pursuant to a notice of this nature. The landlord argued that since the tenancy was a fixed term tenancy and the term of the tenancy ended on July 31, he found it appropriate to collect rent for June. The tenant is claiming the return of rent for June and compensation pursuant to the notice to end tenancy.

The tenant is also claiming the return of his security deposit minus the agreed upon cost of power washing (\$200.00). In addition, the tenant is claiming the cost of his personal property that is in the landlord's possession. This consists of a set of dumb bells and a tarpaulin that he used to cover the roof when it leaked just prior to the end of tenancy. The landlord agreed to return the dumb bells and requested the tenant to pick up other items left behind. The landlord stated that the tarpaulin was disposed off during the repair of the roof.

The landlord is claiming the following:

1.	Water and Sewer for January to March 31, 2011	\$310.22
2.	Water and Sewer for April to June 30, 2011	\$309.26
3.	Water and Sewer for July	\$103.24
4.	Power washing tennis courts and driveway	\$392.00
5.	Gas bills for July	\$68.87
6.	Electricity for Jun 21 to July 31, 2011	\$54.81
7.	Repair water damaged wood floor by entrance	\$448.00
8.	Remove stains from water damaged tile	\$224.00
9.	Replace garage door	\$650.00
10.	Change locks	\$224.00
11.	Replace broken window	\$190.68
12.	Replace microwave oven	\$224.00
13.	Replace light diffuser	\$44.80

14.	Filing fee	\$50.00
	Total	<b>\$3,293.88</b>

The tenant is claiming the following:

1.	Rent for two months	\$6,900.00
2.	Rent increase for nine months	\$1,800.00
3.	Damage deposit	\$1,625.00
4.	Filing fee	\$100.00
5.	Personal property	\$90.00
	Total	<b>\$10,515.00</b>

### **Analysis**

Based on the testimony of both parties, I find that on August 01, 2008, the parties entered into a fixed term tenancy agreement for one year which continued on as a month to month tenancy, after the completion of the term. In June of 2010, after one year of a month to month tenancy, the landlord asked the tenant to enter into a fixed term of one year. The letter informed the tenant that the monthly rent had increased by \$200.00 to \$3,450.00 and that the tenancy would end if the tenant did not agree to a fixed term at an increased rent.

Based on the letter sent to the tenant and on the testimony of both parties, I find that the landlord informed the tenant that the tenancy would end if he refused to enter into this new fixed term contract and that the tenant felt threatened at the prospect of having to move at short notice. I also find that the landlord did not give the tenant any notice of the rent increase, increased the rent by an amount that was over the legislated rental increase amount and did not give the tenant a reasonable option to refuse the fixed term rental contract. Accordingly, I find that that the fixed term contract signed on July 15, 2010 is of no force or effect as it was presented to the tenant during a month to month tenancy and threatened termination of the tenancy if not signed by the tenant.

I also find that the rent increase was illegal as it was over the legislated percentage of rent increase and was implemented without any notice to the tenant.

Section 51(1) of the *Residential Tenancy Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 50 (1) of the *Residential Tenancy Act* states that If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*], the tenant may end the tenancy early by:

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Pursuant to 50(1) of the *Residential Tenancy Act* the tenant gave adequate notice (ten days) to end the tenancy after receiving a notice to end tenancy for landlord's use of property and accordingly is also entitled to compensation in the amount of one month's rent. I also find that that since the tenancy ended on May 31, 2011, the landlord is not entitled to rent or utilities for the period following the end of the tenancy.

Landlord's claim:

1. Water and Sewer for January to March 31, 2011 - \$310.22

Both parties agreed that this amount was already paid by the tenant.

2. Water and Sewer for April to June 30, 2011 - \$309.26

The landlord prorated the monthly dues for Water and Sewer at \$103.24. This tenancy ended on May 31, 2011 and therefore the landlord is entitled to utilities for the period ending May 31, 2011. Based on the landlord's calculation of the monthly dues I find that the landlord is entitled to utilities for April and May in the amount of \$231.76

3. Water and Sewer for July - \$103.24

Based on the end date of the tenancy, the landlord is not entitled to utilities for July.

4. Power washing tennis courts and driveway - \$392.00

The landlord agreed to accept the tenant's offer of \$300.00.

5. Gas bill for July - \$68.87
6. Electricity for June 21 to July 31, 2011-10-31

Based on the end date of the tenancy, the landlord is not entitled to utilities for June and July.

7. Repair water damaged wood floor by entrance - \$448.00

The tenant denied having caused any damage to the wood floor and stated that this damage was present at the start of the tenancy. The landlord filed a copy of the move in inspection report. However, the tenant was not present during this inspection.

The landlord stated that the tenant had already moved in at the time of the inspection, but did not explain why he had not notified the tenant of the inspection. The tenant was present during the move out inspection and both parties agreed in writing about the deficiencies that the tenant was responsible for. Repair of the wood floor is not noted in the list of deficiencies.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Based on the testimony of both parties and the documentary submissions, I find that the landlord has not proven his claim.

8. Remove stains from water damaged tile - \$224.00

The move in inspection report indicates some damage to the tiles. Therefore I find that the landlord has not proven that the stains are as a result of negligence on the part of the tenant and accordingly I dismiss the claim.

9. Replace garage door - \$650.00

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the garage door. As per this policy, the useful life of a garage door and operator is ten years. The landlord purchased the home approximately 11 years ago and has not replaced the garage door and therefore by the end of the tenancy, the garage door had outlived its useful life and would have had to be replaced anyway, at the landlord's cost. Accordingly, the landlord's claim for the cost of replacement is dismissed.

10. Change locks - \$224.00

Section 25 (1) of the *Residential Tenancy Act* states that at the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that the keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

In this case the landlord has moved into the rental unit and has not changed the locks yet. Pursuant to Section 25, if the landlord chooses to alter the means of access to the rental unit, he must do it at his own expense.

11. Replace broken window - \$190.00
12. Replace microwave oven - \$224.00
13. Replace light diffuser - \$44.80

The landlord did not file any evidence by way of invoices to support his claim. In addition, he stated that he has not yet incurred these expenses. Accordingly, his claim for these items is dismissed.

14. Filing fee - \$50.00

The landlord has not proven the majority of his case and therefore must bear the cost of filing his application.

Tenant's application:

1. Rent for two months - \$6,900.00

Based on the testimony of both parties and pursuant to section 50(1) of the *Residential Tenancy Act*, I find that the tenant is entitled to compensation in the amount of one month's rent. The tenancy ended on May 31, 2011 and therefore the landlord is not entitled to rent for June. Accordingly, the tenant has proven his claim for \$6,900.00.

2. Rent increase for nine months - \$1,800.00

Section 42 of the *Residential Tenancy Act* states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and a notice of a rent increase must be in the approved form.

Section 43 of the *Residential Tenancy Act* states that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application or agreed to by the tenant in writing. If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase

In this case, based on the manner in which the landlord presented the rent increase to the tenant and the circumstances that compelled the tenant to sign the fixed term lease,

I find that the lease is not valid and the tenancy continued to be a month to month tenancy. I also find that the rent increase is in excess of the legislated amount and the tenant was not given any notice of the rent increase.

Since the landlord did not comply with section 42, I find that the tenant is entitled to recover the increase and is therefore entitled to the return of \$1,800.00 which consists of the monthly increase of \$200.00 for a period of nine months.

3. Damage deposit - \$1,625.00

I find that the tenant is entitled to the return of the damage deposit with appropriate deductions.

4. Filing fee - \$100.00

The tenant has proven his case and therefore is entitled to the recovery of the filing fee.

5. Personal property - \$90.00

The landlord agreed to return the dumb bells but will have to pay for the tarpaulin. Therefore the tenant is entitled to \$50.00.

Overall the landlord has established a claim for \$231.76 for utilities and \$300.00 for power washing for a total of \$531.76.

The tenant has established a claim as follows:

1.	Rent for two months	\$6,900.00
2.	Rent increase for nine months	\$1,800.00
3.	Damage deposit + interest (\$12.59)	\$1,637.59
4.	Filing fee	\$100.00
5.	Personal property	\$50.00
	<b>Total</b>	<b>\$10,487.59</b>

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$9,955.83 which consists of the difference in the entitlements of the two parties. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount of \$9,955.83. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order for **\$9,955.83**.

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: November 01, 2011.

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Residential Tenancy Branch