



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, OLC, RP, RR, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for storage fees and for a pet deposit. The tenant applied for a monetary order for the return of excess rent paid due to a rent increase that was not in compliance with section 41 of the *Residential Tenancy Act*, for an order directing the landlord to comply with the *Act*, to carry out repairs and reduce rent. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing the tenant withdrew her application for reduced rent.

### **Issues to be decided**

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of a portion of the rent paid by her? Does the landlord carry out adequate maintenance of the rental property?

### **Background and Evidence**

The tenancy started on November 01, 2008. The rent at the start of the tenancy was \$2,650.00 due on the first of the month. In September 2011, the landlord raised the rent to \$2,800.00. Prior to moving in, the tenant paid a security deposit of \$1,325.00.

The landlord filed a copy of the tenancy agreement. A term of the agreement states that pets and smoking are not permitted on the property. The landlord stated that there is an area for storage located under the deck which was locked and contained some of the landlord's personal belongings. The tenancy agreement is silent with regard to the use of this storage area.

The tenant stated that the storage area was unlocked and she started using this area soon after Christmas 2012, for the storage of decorations. In August 2013, the landlord called to inform the tenant that she would be visiting the rental property to retrieve some of her belongings from the storage area. The tenant informed the landlord that she had also stored some of her own belongings. The landlord requested the tenant to remove her belongings. The landlord visited shortly after and the tenant had cleared the storage area of all her personal belongings.

On November 15, 2013, the landlord applied for storage fees. The landlord is claiming that the tenant used the storage area without the landlord's permission and had broken the lock. The tenant testified that there was no lock on the door. The tenant also stated that the landlord had not mentioned that the storage area was solely for the use of the landlord and since it was unlocked and located under the deck, the tenant used the storage area. The tenant also testified that some of the landlord's furniture was being stored inside the house. The landlord stated that those items of furniture were included with the rental unit. Both parties agreed that the storage area and the furniture provided by the landlord were not referenced in the tenancy agreement.

The landlord stated that a storage unit approximately the size of the storage area costs \$149.00 to rent. The landlord has applied for an additional \$100.00 per month for the use of the storage area, dating back to the start of the tenancy for a total of \$6,000.00.

The landlord stated that when she visited the storage area in August 2013, she saw a dog cage and realized that the tenant had a dog. The landlord agreed that she had seen the tenant walking the dog earlier and had also seen the dog in the tenant's car, but didn't realize that the dog belonged to the tenant and was living inside the rental unit, until she saw the cage in the storage area.

The tenant testified that she has had this pet for the last 12 years and that the landlord and/or her partner had seen the dog when they came over to remove some of their belongings at the start of the tenancy and when the partner came to do some repairs to the sink, later on during the tenancy and did not object. The landlord is now applying for a pet deposit of \$2,000.00.

The tenant stated that effective September 01, 2011, the landlord increased the rent by \$150.00 which works out to 5.66%. The rate set by legislation for that year was 2.3%. The tenant has applied for the return of rent paid in excess of the legislated rate. The landlord also served the tenant a notice of rent increase on July 28, 2013. This 5% increase resulted in an increase of \$140.00 which was to be effective on November 01, 2013.

The tenant made some enquiries and found out that this rate was not in compliance with legislation and also found out that the increase imposed in September 2011 was also not in compliance.

The tenant has calculated the amount of rent that was paid in excess of the legislated increase and has applied for a refund of \$2,314.00. The tenant amended her claim to include the excess paid for the months of November and December 2013.

The landlord has made a separate application for a rent increase in excess of the legislated amount and this matter will be dealt with during that hearing. At the time of this hearing the latest rent increase had not yet taken effect.

The tenant has also applied for an order directing the landlord to carry out repairs to the dryer and the fireplace. The tenant agreed that the landlord always acted responsibly in the past. The landlord stated that she has already repaired the dryer and will make arrangements to repair the fireplace.

### **Analysis**

#### **Landlord's application:**

Based on the testimony of both parties, I find that the storage area is located attached to the rental property, under a deck. The tenancy agreement does not stipulate that this area is for the sole use of the landlord. The testimony of both parties was contradictory with regard to whether this area was locked or not.

Since this area is part of the rental property and the tenancy agreement does not contain a term stating specifically that it is not for the use of the tenant, I find that the use of this area is included in the rent and therefore after four plus years into the tenancy, the landlord cannot charge an extra \$100.00 per month for the use of this area. Accordingly, the landlord's claim for \$6,000.00 for the use of the storage area is dismissed.

Section 20c of the *Residential Tenancy Act* states that a landlord must not require a pet deposit at any time other than:

1. When the landlord and tenant enter into the tenancy agreement, or
2. If the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property

I have to determine whether the tenant acquired the pet during the term of the tenancy or prior to the start of the tenancy. The tenant stated that she has had this pet for the last 12 years and would not move into a rental unit that did not allow pets.

The landlord agreed that she had seen the tenant walking the dog sometime during the tenancy. The tenant stated that the landlord's partner did some repairs to the sink around three years ago and at that time the dog was present inside the rental unit.

Based on the testimony of both parties, I find that on a balance of probabilities it is more likely than not that the tenant moved into the rental unit with the dog and it is not likely that it would take the landlord almost five years to discover that the tenant had a dog. Therefore pursuant to s.20 I must dismiss the landlord's claim for a pet deposit.

Tenant's application:

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

In this case, the landlord imposed a rent increase effective September 01, 2011 at a rate of 5.66% when the approved rate was 2.3%. This increase was not ordered by the director as the landlord had not made application for a rent increase in excess of the legislated amount. This increase raised the rent from \$2,650.00 to \$2,800.00 instead of the legislated amount of \$2,710.95. The landlord served the next rent increase in July 2013 which will be addressed in the next hearing. Therefore the tenant overpaid rent in the amount of \$89.05 per month for a period of 28 months which includes the current month of December 2013. Accordingly, the tenant overpaid rent in the total amount of \$2,493.40 for this period.

Pursuant to section 43 of the *Residential Tenancy Act*, I find that the landlord imposed a rent increase in contravention of the Regulations and therefore the tenant is entitled to recover the amount of the increase. Accordingly I find that the tenant has established a claim of \$2,493.40. Since the tenant has proven her case she is entitled to the recovery of the filing fee of \$50.00 for a total claim of 2,543.40.

The rent that the tenant must pay for January 2014 and onwards is \$2,710.95. The tenant may make a onetime deduction of \$2,543.40 off rent for January 2014. The rent payable for January 2014 is \$167.55. Rent for the following months will be \$2,710.95 until the rent is increased in compliance with the Regulations or pursuant to an order from the Director.

**Conclusion**

The tenant may make a onetime deduction off rent for January 2014 in the amount of \$2,543.40. The tenant must pay \$167.55 as rent for January 2014. Rent is set at \$2,710.95 effective February 2014 until further notice of a rent increase.

The landlord will carry out repairs as agreed to.

The landlord'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 *Residential Tenancy Act*.

Dated: December 10, 2013

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Residential Tenancy Branch