

DECISION

Dispute Codes DRI MNDC OLC FF

Preliminary Issues

The Agent for the Landlord testified that he hand delivered the Landlord's evidence to the Residential Tenancy Branch and to the Tenant on Monday November 16, 2009, four days before the hearing.

I noted that I had not received the Landlord's evidence, prior to the hearing. I informed the Landlord's agent that he had not filed the evidence in accordance with section 74.1 of the *Residential Tenancy Branch Rules of Procedure*, which provides that all evidence must be served to the applicant and the Residential Tenancy Branch at least five days before the hearing. I informed the Landlord's agent that while I would not be considering the Landlord's documentary evidence, the Landlord and her agents would be allowed to provide testimony in relation to their evidence.

The Tenant appeared and provided testimony that she vacated the rental unit on October 31, 2009 and as a result she would be amending her application to withdraw her request to dispute an additional rent increase and for an order to have the Landlord comply with the Act. The Tenant wished to proceed with her request for a Monetary Order for damage or loss under the Act and to recover the cost of the filing fee.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenant to the Landlords, was done in accordance with section 89 of the *Act*, served personally by the Tenant to the Landlord on August 2, 2009. The Landlord confirmed receipt of the hearing package.

The Landlord, her two Agents, and the Tenant appeared, acknowledged receipt of evidence submitted by the Tenant, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to an Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that the month the month tenancy began on August 1, 2002. The Tenant argued that the Landlord wrote out the original tenancy agreement displaying rent at \$550.00 per month and that the Tenant negotiated a reduction in rent to \$500.00 per month.

The Tenant referred to her documentary evidence which supports that the rent amount was changed from \$550.00 to \$500.00 and the change was initialled by the Landlord. The Tenant testified that her monthly rent was \$500.00 from the onset of the tenancy, August 1, 2002, to August 31, 2005. The Tenant argued that the Landlord increased her rent from \$500.00 to \$550.00 effective September 1, 2005, an illegal increase amount, which she has paid from September 1, 2005 to October 31, 2009. The Tenant is seeking the return of the illegal increase of \$50.00 per month for the 46 months applied for on her dispute resolution application between September 1, 2005 to July 31, 2009 and an additional three months for August to October 2009.

The Landlord's agent argued that the Landlord had a verbal agreement with the Tenant whereby the two parties agreed, at the onset of the tenancy, that the Landlord would increase the Tenant's rent to \$550.00 effective September 1, 2005. The Agent argued that the Landlord provided the Tenant with written notice of the rent increase on May 31, 2005.

The Tenant testified that there was no such verbal agreement and that she knew nothing of the pending rent increase until she received the Landlord's letter advising her of the increase. The Tenant argued that she received a notice on June 30, 2009 for a second illegal rent increase and that she informed the Landlord that the increase was an illegal amount and that she filed an application for dispute resolution.

The Landlord's agent testified that the Tenant has failed to apply for dispute resolution in accordance with section 60, within two years.

The Landlord's agent argued that they had a receipt which was proof that the Tenant agreed to the verbal arrangement for the rent increase as the receipt was for the \$275.00 security deposit, one half of \$550.00 and not \$500.00.

I explained to the Landlord's agent that a receipt showing the amount of security deposit paid by the Tenant did not constitute proof of a verbal agreement to increase the rent at a later date. The Landlord's two agents and the Landlord began to argue and raise their voices in an attempt to substantiate their case. I told the Landlord and her two agents that they needed to move forward and I asked if they wished to proceed with providing testimony in relation to the rest of their evidence. I note that the Landlord and her two agents continued to argue their point about the amount of security deposit paid by the Tenant and would not move forward, at which time I ended the hearing, in accordance with #8.7 of the *Residential Tenancy Branch Rules of Procedure*.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Tenant's right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

There is contradictory testimony relating to an alleged verbal agreement whereby the Landlord contends that the Tenant agreed to the rent increase and the Tenant contends that there never was a verbal agreement. In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced, if they comply

with the Act. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

In this case not only do the parties disagree, the alleged agreement is in contravention of the Act and I must point out that section 5 of the Act stipulates that a Landlord and Tenant cannot avoid or contract out of the *Residential Tenancy Act* (Act).

In response to the Landlord's agent's claim that the Tenant has applied for compensation outside of the limitation period provided for under section 60 of the Act; I note that section 60 of the Act provides that an application for dispute resolution must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. In this case the tenancy ended on October 31, 2009 so the Tenant would have up to October 31, 2011 to file her application.

The testimony and evidence supports that a rent increase in the amount of \$50.00 was imposed on the Tenant effective September 1, 2005 and that this rent increase represented a 10% increase from the previous rent due of \$500.00. The annual rate of rent increase allowed in 2005, in accordance with section 22 of the *Residential Tenancy Regulation*, is 3.8%. Based on the above I find that the Landlord has contravened section 43 (1) of the Act which provides that a Landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. Based on the aforementioned I find that the Tenant has proven the test for damage or loss, as listed above, and I approve her claim for 47 months of an illegal rent increase (Note: there are 47 months between September 2005 through to and including July 2009 and not 46 as requested by the Tenant), accordance with section 43(5) of the Act which states that if a Landlord collects a rent increase that does not comply with the Act, then the Tenant may recover the increase.

The Tenant has requested to amend her application to include a claim for the return of the final three months of illegal rent increase for August, September, and October 2009, now that her tenancy has come to an end. The Landlord has been aware of the Tenant's application for dispute resolution since August 2, 2009 and yet the Landlord continued to charge the illegal increase for the remaining three months of the Tenancy. Given that I have found that the Tenant has proven the test for damage and loss as listed above, I hereby approve the Tenant's request to amend her application and to resolve this matter completely.

As the Tenant has been successful with her application, I find that she is entitled to recover the filing fee from the Landlord for this application.

Monetary Order – I find that the Tenant is entitled to a monetary order and that the Tenant is entitled to recover the filing fee from the Landlord as follows:

Recovery of \$50.00 rent for 47 months (September 1, 2005 thru to and including July 2009)	\$2,350.00
Recovery of \$50.00 rent for 3 months (August, September, October 2009)	150.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$2,550.00

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$2,550.00. The order must be served on the respondent Landlords and is enforceable through the Provincial Court as an order of that Court.

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 23, 2009.

Dispute Resolution Officer