

## **DECISION**

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### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute an additional rent increase after the tenancy ended and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 1, 2009. Canada Post tracking numbers were provided in the Tenant's verbal testimony. The Landlord is deemed to be served the hearing documents on December 6, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenant appeared, acknowledged receipt of evidence submitted by the Landlord, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one attended on behalf of the Landlord despite the Landlord being served notice of today's hearing in accordance with the Act and despite the Landlord submitting documentary evidence on January 4, 2010.

### Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month verbal tenancy agreement began on December 17, 2006 and ended on December 9, 2007 when the Tenant vacated the rental unit. The monthly rent was payable on the first of each month beginning at \$250.00 and then increased to \$300.00 per month effective August 1, 2007. The Tenant paid a security deposit of \$130.00 on December 17, 2006.

The Tenant testified that her Landlord enforced an illegal rent increase of 20% and did not provide proper notice of the increase. The Tenant referred to her documentary evidence which included among other items a copy of the April 27, 2007 hand written

notice of rent increase, a copy of the December 5, 2007 agreement to end her tenancy on or before December 12, 2007, and copies of rent receipts which display the amount of rent paid changed from \$250.00 to \$300.00 per month as of August 2, 2007.

The Tenant is seeking \$200.00 for reimbursement of the \$50.00 increase in rent amounts paid for the four months of August 2007 through to November 2007. The Tenant is not claiming \$50.00 for December 2007 because in accordance with her agreement to end the tenancy the Landlord returned her \$300.00 December 2007 rent in full. The Tenant confirmed that her security deposit was returned to her shortly after the end of the tenancy.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord submitted documentary evidence which confirms a rent increase was implemented and the Tenant's evidence supports the amounts and dates of that increase. Section 43 of the Act provides a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations and that amount for the year 2007 was 4% so in this case the allowable increase would have been \$10.00 which would bring the Tenant's rent from \$250.00 to \$260.00. Section 43 (5) stipulates that if a landlord collects a rent increase that does not comply with this part, the tenant may recover the increase amount.

Based on the aforementioned I find the Tenant has proven the test for damage or loss, as listed above, and I hereby approve her claim in the amount of \$200.00.

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 \$200.00. The order must be served on the respondent 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: April 15, 2010.

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Dispute Resolution Officer