

## DECISION

Dispute Codes      DRI, MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order regarding a disputed additional rent increase pursuant to section 43; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlord did not attend this hearing, although I waited until 1:53 p.m. in order to enable the landlord to connect with this hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he handed a copy of his dispute resolution hearing package to the landlord's building manager, TC, on November 17, 2011, accompanied by a Vancouver Police Department officer, Mr. D. He said that he also handed his written evidence to the same individual accompanied by a uniformed Vancouver Police Department officer. I am satisfied that the tenant served his hearing and evidence packages to the landlord in accordance with the *Act*.

### Issues(s) to be Decided

Should an order be issued regarding a disputed additional rent increase? Is the tenant entitled to a monetary Order for compensation for losses arising out of this tenancy?

### Background and Evidence

This periodic tenancy commenced on August 12, 2010. The tenant said that no written tenancy agreement was created for this tenancy. He said that payments were made by the Ministry of Social Development (the Ministry) on his behalf. He testified that the regular monthly rent commencing on August 12, 2010 was set at \$390.00, payable by the Ministry on his behalf on the 12<sup>th</sup> of each month. He testified that the landlord returned \$165.00 of his \$195.00 security deposit paid by the Ministry on August 12, 2010.

The tenant testified that he received a notice from the new landlord (the current landlord) in June 2011 to advise him that his monthly rent would be increasing from \$390.00 to \$425.00 as of his next rental payment. He provided copies of receipts

showing that \$425.00 in monthly rent was paid on his behalf for June, July, August and September 2011. He said that he vacated the rental unit on October 10, 2011, before his October 12, 2011 rent payment was due. The tenant applied to have the monthly rent for the above-noted four months reduced to the amount that the landlord would be legally entitled to obtain for those months. He said that the new landlord had not give proper notice regarding this rent increase and was seeking a rent increase in excess of the 2.3% increase allowed under the *Regulations*.

The tenant applied for a monetary award of \$450.00. This amount included the amounts that he considered that the landlord overcharged him for four months as well as an amount for August 2010. He maintained that the Ministry mistakenly paid double rent to the former landlord for August 2010, the first month of his tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the tenant did not provide a copy of the Shelter agreement with the Ministry or the Intent to Rent form that initiated his tenancy. In the absence of a written tenancy agreement or any of these other documents, the sole written evidence that the tenant produced as evidence that he resided in the rental property was a series of receipts and cheque history payment records from the Ministry. He also provided no copy of the landlord's notice of a rent increase. He said that he was given this notice by the new landlord in June 2011, but had lost it when he moved.

Although it does appear that the Ministry's payments to the landlord on the tenant's behalf increased to \$425.00 over time, the tenant has not provided sufficient documentation to support his claim that this payment resulted from an increase in his monthly rent. His failure to provide any confirming information regarding his initial tenancy arrangements and, more importantly, to provide a copy of the landlord's notice advising him that the additional charge was an increase in his rent does not allow me to make a monetary award in his favour. For these reasons, I dismiss the tenant's application for an order regarding a disputed additional rent increase regarding this tenancy that ended on October 10, 2011.

At the hearing, the tenant referred to a double payment of his rent for August 2010. However, he was unable to identify the alleged double payment in the information he had entered into written evidence. It appeared that he was referring to at least some different material that he had not entered into written evidence.

If there were a double payment by the Ministry for August 2010, I would expect that this would have been noticed by the Ministry or the tenant and brought to the attention of the landlord much sooner than November 2011, after the tenant vacated the rental unit. By delaying raising this issue for 14 months, the tenant is now claiming an overpayment to a previous landlord. As such, it would be very difficult for the current landlord to address the tenant's assertion that he overpaid rent to the previous landlord 14 months earlier. As outlined above, the burden of proof regarding a claim for a monetary Order rests with the party making the claim, in this case the tenant.

The tenant's delay in bringing this issue to the landlord's attention until well after the alleged overpayment occurred also raises concerns with respect to the legal doctrine of "laches". Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

*[The doctrine] is based upon the maxim that equity aids the vigilant and not those who slumber on their rights.*

*...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.*

Pursuant to the insufficient evidence provided by the tenant to demonstrate that there had been an overpayment of his rent in August 2010 and the doctrine of laches, I find that this aspect of the tenant's application must be dismissed.

### Conclusion

I dismiss the tenant's application for an order regarding a disputed additional rent increase regarding this tenancy that ended on October 10, 2011, without leave to reapply. I dismiss the tenant's application for a monetary Order without leave to reapply.

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 02, 2011

---

Residential Tenancy Branch