



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and landlord's agent, RM (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application ("Application") for dispute resolution package. In accordance with sections 89 and 90 of the Act, I find that the landlord was served with the Application.

Issue(s) to be Decided

Is the tenant entitled to an order regarding a rent increase?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The landlord could not recall the start date of the tenancy. The tenant testified that the tenancy began April 1, 2006 on a fixed term ending March 31, 2007 after which it became a month-to-month tenancy. Rent in the current amount of \$925.00 is payable on the first of each month. The tenant remitted a security deposit in an estimated amount of \$400.00.

The tenant testified that last year in 2015, the landlord raised the rent by 2.78% instead of the 2.5% allowable under the *Act*. Specifically the rent was raised from \$900.00 per month to \$925.00 per month effective September 1, 2015. The tenant said that she paid \$925.00 from September 1, 2015 to June 1, 2016, resulting in an overpayment of \$2.50 per month, as the allowable amount under the *Regulation* was \$922.50, for a total of \$25.00.

The landlord acknowledged in the Notice of Rent Increase, that he raised the rent by 2.78% in 2015 and he testified during the hearing that he was prepared to accede to the 2.5% allowed in the *Regulation* if directed to do so.

The tenant seeks a monetary order of \$3,178.61. The tenant explained that on February 28, 2015, a plumber hired by the landlord's strata company caused considerable water damage to her rental unit while attempting to perform a repair to a kitchen faucet and garburator. The tenant testified that she lost use of her rental unit from March 2015 to May 2015. The tenant provided pictures of her kitchen and living room during this time, stating that she had to move her furniture in order to allow the underlay and carpet to be removed and dried by machines. The tenant did not state exactly what she lost use of in the kitchen however the pictures depicted large fans in the kitchen plugged into kitchen receptacles. She testified that by mid-May 2015, the carpets were reinstalled. The tenant seeks reimbursement of \$2,700.00 for rent paid in the amount of \$900.00 per month between March 2015 and May 2015. The tenant testified that she lost the use of her television because she could not set up her living room. The tenant provided confirmation of payment for cable services between March and May 2015. The tenant did not provide testimony on additional utilities but provided copies of electricity bill statements from March to May 2015. The tenant is seeking reimbursement for utility costs in the total amount of \$369.61 that were paid between March and May 2015.

The landlord testified that water damage was inadvertently created by a plumber on February 28, 2015. The landlord testified that the strata company arranged for and conducted the repairs in relation to the water damage. Consequently, he could not provide detailed information on the repairs or condition of the rental unit. The landlord further testified that he understood only the kitchen floor and the surrounding carpet were affected. The landlord testified that the tenant's claim is excessive as she continued to live in the rental unit and continued to use the utilities. The landlord acknowledged a loss did occur but not to the degree the tenant has suggested.

The tenant also seeks reimbursement in the amount of \$9.00 for printing supplies used in preparation for this hearing. As part of the monetary order, the tenant seeks to recover the \$100.00 filing fee for this Application.

Analysis

Rent Increase

Section 43 of the *Act* establishes that a landlord may impose a rent increase up to the amount calculated in accordance with the *Regulation* and if a landlord collects rent that exceeds the *Regulation*, the tenant may deduct the increase from rent. In 2015, the standard allowable rent increase for residential tenancies was 2.5%. Therefore, the maximum amount that the landlord could have increased the rent was from \$900.00 to \$922.50 per month.

Based on the parties' undisputed evidence, I find that the landlord increased rent to \$925.00 in excess of the standard allowable amount of \$922.50 under the *Regulation* for 2015 and the tenant paid an amount higher than legally allowed between September 2015 and June 2016. Accordingly, I find that the tenant is entitled to recover \$25.00 total (10 months x \$2.50) for this overpayment. I further find that rent is set at \$922.50 per month for this rental unit retroactive from September 2015 until it is legally changed in accordance with the *Act*.

Monetary Compensation

Section 28 of the *Act* establishes a tenant's entitlement to quiet enjoyment which include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant claims for monetary compensation in the amount of \$2,700.00 for rent from March to May 2015. Liability for this amount is governed by section 65(1)(f) of the Act.

Section 65(1)(f) of the *Act* allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. In this case, I find that as a result of breach of the tenant's right to quiet enjoyment pursuant to section 28 and the breach of the landlord's obligation to provide a rental unit that complies with section 32(1) of the *Act*, the value of the tenancy agreement was reduced. For the purposes of section 65(1)(f) of the *Act*, it does not matter whether or not the landlord was at fault. Rather, the focus is on whether the rental unit provided under the tenancy agreement was substantially the agreement that the landlord agreed to provide. In this case, the leak in the kitchen and living room caused a material devaluation in the tenancy agreement.

Residential Tenancy Policy Guideline, "6. *Right to Quiet Enjoyment*" provides me with guidance in determining the amount of the reduction in value. The Policy establishes that I should take into consideration the seriousness of the situation and the length of time over which the situation has persisted. In this case, the nature of the situation was serious. The water leak was a persistent issue. The kitchen and living room are main areas which are more integral to a rental unit. As a result of the leak, the tenant's furniture had to be relocated to one side of the living room, the carpets had to dry and large fans were present throughout the rental unit, resulting in diminished functionality of those areas. I do not accept the tenant's submission that the value of the rental unit was reduced by 100%, as she was still able to use large portions of her rental unit.

In this situation, the assessment of damages is not a precise science; it is not even a calculation. With consideration of the objective value of the areas impacted, the nature of water damage, and the duration of the loss, I value the diminishment of the tenancy as 15%. I find that the tenancy was devalued over the period from March 1, 2015 to May 31, 2015, I find that the tenant is entitled to a past rent abatement in the amount of \$135.00 for each of the three affected months based on rent being \$900.00 per month for the above months. I consider this amount reasonable given the impact that the leak had on the tenant.

In regards to the tenant's claim for reimbursement of utilities of \$369.61 total, I find the tenant lost the use of her television in the living room between March and May 2015 due to the rearrangement of furniture due to the water damage. The tenant did not specify whether her cable provider provided cable only or whether they provided phone and internet as well. For these reasons, I do not accept that the tenant is entitled to full reimbursement of the cable payments in the amount of \$104.62 per month. I value the loss as 10% between March and May 2015 and I find that the tenant is entitled to monetary compensation in the amount of \$10.46 for each of the three months.

Although the tenant did not provide testimony on the recovery of electricity, she did provide copies of electricity bills and a written calculation on the portion she claims. The tenant calculated she is owed \$55.75 reimbursement of electricity used between February 28, 2016 and May 9, 2015. I find that as a result of the water damage, fans were utilized for some duration of time and increased the tenant's consumption of electricity. However I do not find this entitles the tenant to a recovery of all electricity charges; rather I find the electricity consumption was only minimally increased within the rental unit. Based on these reasons, I assess the loss as 10% of the \$55.75 of electricity used and find the tenant is entitled to \$5.58 in compensation.

I dismiss the tenant's claim of \$9.00 for printing supplies used in preparation for this hearing process, as the only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

As the tenant was mainly successful in this Application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the Application.

Conclusion

I order the tenant to deduct \$566.96 from future rent payable to the landlord at the rental unit, in full satisfaction of the monetary award provided to the tenant at this hearing.

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: June 08, 2016

Residential Tenancy Branch