



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 689352 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, FF

Introduction

This is an application brought by the tenant requesting a Monetary Order in the amount of \$12,034.90.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

This tenancy began in June of 2006 with the monthly rent of \$1050.00, and at that time the tenant paid a security deposit of \$450.00.

On today's application the tenant is claiming the following:

Loss of enjoyment for the months of February 2015, March 2015, April 2015, and May 2015.	\$2860.00
Two month Notice to End Tenancy not given in good faith	\$2860.00
Return of double security deposit plus interest	\$1029.76
Illegal rent increases over a nine year period	\$5185.14
Filing fee	\$100.00

Total	\$12034.90
-------	------------

The applicant testified that he is requesting the return of one half his rent for the months of February 2015 through May 2015, claiming that, after he bounced two cheques in one year period, the landlord started harassing him by repeatedly serving him with Notices to End Tenancy and sending numerous harassing e-mails.

The applicant further testified that he disputed the notices to end tenancy however, even when he won, the landlord would just give him another Notice to End Tenancy.

The applicant further testified that this ongoing harassment from the landlord made it so that he could not enjoy the use of his rental unit, and he believes, therefore, that the value of his rental unit was decreased by 50% and is therefore requesting a rent reduction of 50% for those four months.

The applicant also stated that he is requesting an Order for return of double his security deposit plus interest, stating that he gave the landlord a forwarding address in writing however the security deposit was never returned.

The applicant also stated that he is requesting a Monetary Order for the equivalent of double the monthly rent, stating that the landlord gave him a 2 month Notice to End Tenancy for landlord use claiming that she would be moving into the rental unit with her child; however she never did.

The applicant also stated that he is requesting a Monetary Order for illegal rent increases given by the landlord over the past nine years, stating that the illegal rent increases were given on the following dates:

June of 2008	\$40.00 per month increase
July 2009	\$44.00 per month increase
July 2010	\$46.00 per month increase
January 2011	\$65.00 per month increase
January 2012	\$56.25 per month increase
January 2013	\$61.75 per month increase
January 2014	\$30.00 per month increase
April 2015	\$37.00 per month increase

The applicant further states that when increases are calculated at the allowable rate rather than the amount given by the landlord, it shows that he has overpaid the rent by \$5185.14 during the term of the tenancy.

The applicant therefore states that he believes his full claim is justified.

Landlord testified that she does not believe the tenants claim for loss of use and enjoyment is justified whatsoever, claiming that it was actually him that was harassing her.

The landlord further testified that the tenant is misrepresenting the truth and has been a problem tenant who sent her ongoing harassing texts throughout the tenancy.

The landlord further testified that she believes that the tenant has only filed this claim in retaliation because of the \$4306.99 award she received against the tenant in a previous file, which he has never paid.

The landlord further states that she does not believe that she was required to move into the rental unit because the tenancy did not end pursuant to the two month Notice to End Tenancy, it actually ended due to a mutual agreement to end the tenancy that was reached at a previous arbitration hearing.

The landlord further states that she does not believe the tenant has any claim for the return of the security deposit as that deposit was dealt with in a previous hearing where she was awarded the \$4306.99 that the tenant has failed to pay.

The landlord further states that the tenant never disputed any of the rent increases that were given, and accepted them willingly, and nothing was said until after the above award was issued against him, and again she believes this is just an attempt to extort money from her due to her having been awarded \$4306.99 against him.

In response to the landlords claims, the tenant testified that the landlord is just fabricating negative information against him and the reason he has filed this claim against the landlord was in hopes of having the landlords \$4306.99 Order against him canceled, out due to all the issues he has had to deal with.

Analysis

It is my finding that the tenant has not met the burden of proving that the landlord has been harassing him or that he has had a significant loss of use and enjoyment of the rental unit. It is obvious that the landlord and tenant have had some disagreements in the past; however it's my finding that the applicant has not met the burden of proving that these disagreements were the fault of the landlord.

The tenant also alleges that the landlords frequent notices to end tenancy are a breach of the tenants right to "quiet enjoyment". A very similar case was dealt with in the Supreme Court case of *Whiffin v. Glass & Glass* (July 26, 1996) *Vancouver Registry No. F882525 (BCSC)*, in which case it was held that attempts by a landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as the landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that a

landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy is to dispute the notice ending the tenancy once given.

I therefore deny the applicants request for \$2860.00 for loss of use and enjoyment.

I also deny the applicants request for an Order for the equivalent of two months' rent. Section 51 of the Residential Tenancy Act does require landlord to pay the equivalent of two months' rent if the tenancy is ended due to a two month Notice to End Tenancy and then the landlord does not comply with the reasons given for that notice, however in this case this tenancy was not ended pursuant to the two month Notice to End Tenancy, it was ended pursuant to a mutual agreement to end the tenancy. The two month Notice to End Tenancy was served in April of 2015 and therefore if the tenant was vacating pursuant to that notice he would have been vacating at the end of June 2015; however instead of vacating pursuant to the two month Notice to End Tenancy the parties came to a mutual agreement for the tenant to vacate at the end of August 2015.

With regards to the tenants claim \$5185.14 in illegal rent increases, it is every tenant's responsibility to be aware of their rights and obligations under the Residential Tenancy Act, and therefore the tenant ought to have known at the time that he received the notices that they were not a legal increases, and he should have filed disputes of the increases at that time

Subject to the Limitation Act, the claim must not be commenced more than two years from the date the claim was discovered, or the date the party reasonably ought to have known of the right to file such a claim. In this case most of these claims were filed over two years after the date that the party reasonably ought to have known of the right to file such a claim. The only claim that was filed within the two-year statute of limitations was the claim of an alleged illegal rent increase given April 2015.

The rent for this unit prior to the increase given April 2015 was \$1393.00 and therefore since the allowable increase for 2015 was 2.5%, the landlord had the right to increase the rent by \$34.82 per month. The landlord however increased the rent by \$37.00 per month and therefore there was a monthly illegal increase of \$2.17. It is my decision therefore that since the tenant paid this illegal increase for a period of five months the landlord must reimburse the tenant a total of \$10.85.

I deny the tenants request for an order for return of double his security deposit as the security deposit has been dealt with in a previous arbitration hearing and I therefore have no authority to deal with the deposit again.

Therefore the total amount of the applicants claim I have allowed is \$10.85

It does appear that this claim has been filed as a result of the landlord having received an award against the tenant, and in fact the tenant stated that he had hope this claim would cancel out the landlords claim, and therefore is my decision that I will not allow the tenants request for recovery of his \$100.00 filing fee.

Conclusion

Pursuant to section 67 of the Residential Tenancy Act I have issued an Order for the respondent/landlord to pay \$10.85 to the applicant/tenant. The remainder of this claim is dismissed 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: September 28, 2016

Residential Tenancy Branch

