



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution under the Residential Tenancy Act (the "*Act*") for:

- cancellation of the landlord's Two Month Notice To End Tenancy for Landlord's Use of Property (the "Two Month Notice");
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order for the landlord to comply with the *Act*, regulations or the tenancy agreement;
- the return of all or a portion of the damage deposit; and
- recovery of the filing fee paid for this application from the landlord.

The tenant appeared at the teleconference hearing and gave affirmed testimony. Part way through the hearing the tenant enlisted the assistance of her friend who acted as an interpreter. The landlord did not appear during the teleconference hearing which lasted 30 minutes. During the hearing the tenant was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant made an initial Application seeking a monetary order in the amount of \$250.00 for money owed or compensation or damage or loss under the *Act*, regulation or tenancy agreement; an order for the landlord to comply with the *Act*, regulations or the tenancy agreement; and recovery of the filing fee paid for this application from the landlord (the "Application").

The tenant then filed an Amendment to the Application seeking to cancel the landlord's Two Month Notice; seeking the return of all or a portion of the security deposit; and increasing the total amount of their monetary claim to \$1,325.00 (the "Amended Application").

As the landlord did not attend the hearing, service of the tenant's Application, Notice of Dispute Resolution Hearing (the "Notice of Hearing") and Amended Application were considered.

The tenant testified that the landlord was served the Application and Notice of Hearing by registered mail. The tenant testified that the registered mailing was sent to the landlord's address on February 22, 2017. The tenant provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Taking into account that the online registered mailing tracking information supports the undisputed testimony of the tenant, and in accordance with section 89 and 90 of the *Act*, I find that landlord is deemed served with the tenant's Application and Notice of Hearing as of February 27, 2017, the fifth day after the registered mailing.

The tenant testified that the landlord was served with the Amended Application on March 16, 2017 in person by leaving a copy with the landlord. Taking into account the undisputed testimony of the tenant and in accordance with section 89 of the *Act*, I find that the landlord has been duly served with the tenant's Amended Application on March 16, 2017.

Preliminary and Procedural Matters

The tenant withdrew her claim to cancel the Two Month Notice as the tenant indicated that she was moving out of the rental unit on March 31, 2017 which is the effective date on the Two Month Notice. Therefore, I only consider the Two Month Notice in relation to the tenant's claim for compensation to recover one month's rent owed by the landlord.

A copy of the Two Month Notice was not available at the hearing. The tenant was asked to submit a copy of the Two Month Notice by 4:00 p.m. following the hearing. The tenant complied and a copy of the Two Month Notice was received by the Residential Tenancy Branch as requested.

Issues to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation or damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order for the landlord to comply with the *Act*, regulations or the tenancy agreement?
- Is the tenant entitled to the return of all or a portion of the security deposit?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

Background and Evidence

The evidence of the tenant established that the tenant moved into the rental unit on August 15th or 16th, 2009 to live with her boyfriend who had lived in the rental unit since 2007. The tenant testified that her boyfriend passed away on August 18, 2014 and that she continued to reside in the rental unit. The tenant testified that when she moved into the rental unit, rent was \$450.00 due on the first day of each month. The tenant testified that her boyfriend had paid a deposit equal to one month of rent in the amount of \$450.00 when he moved into the rental unit. The tenant testified that there is no written tenancy agreement.

Rent Increase:

The tenant testified that on August 1, 2014 the landlord gave her verbal notice on the day rent was due that the rent was increasing by \$25.00 that day. The tenant complied with the landlord's demand and began to pay rent in the amount of \$475.00 starting August 1, 2014.

The tenant testified that three weeks before October 1, 2016 the landlord gave her verbal notice over the phone that he was increasing the rent by \$50.00 effective October 1, 2016. The tenant complied with the landlord's demand and began to pay rent in the amount of \$525.00 starting October 1, 2016.

The tenant's Application and Monetary Worksheet indicate that the tenant is only seeking the sum of \$250.00 for payment of the \$50.00 rent increase for each of the months of October 2016, November 2016, December 2016, January 2017 and February 2017. The tenant's position is that the landlord imposed an illegal rent increase by not complying with the *Act*.

Two Month Notice:

The tenant testified that she was served with a Two Month Notice on February 6, 2017 which the landlord had left in her mail box. The Two Month Notice indicates that the landlord's reason for ending the tenancy is that the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The effective move out date shown on the Two Month Notice is March 31, 2017. The Two Month Notice is dated February 6, 2017 and it is not signed by the landlord.

The tenant testified that she has already made arrangements to move out of the rental unit on March 31, 2017 based upon the effective date set out in the Two Month Notice. The tenant testified that she had given the landlord post-dated cheques for the rent payments and that the landlord cashed her rent cheque for the month of March 2017.

The tenant is seeking a refund for the rent payment for the month of March 2017 in the amount of \$525.00. The tenant's position is that she is entitled to the equivalent of one month's rent from the landlord in accordance with the *Act* as a result of the landlord's Two Month Notice.

Damage Deposit:

The tenant testified that the amount of rent at the start of the tenancy was \$450.00 and that the landlord collected a full month's rent as a security deposit. The tenant is seeking to retain all of the security deposit in the amount of \$450.00.

Filing Fee:

The tenant is seeking to recover the filing fee paid for this Application from the landlord in the amount of \$100.00.

The tenant's monetary claim is for the sum of \$1,325.00 as follows:

Rent Increase paid for October 1, 2016 to February 2017 (5 months x \$50.00)	\$ 250.00
Rent paid for March 2017	\$ 525.00
Return of Security Deposit	\$ 450.00
Filing Fee	\$ 100.00
Total Monetary Claim	\$1,325.00

Analysis

Based on the undisputed documentary evidence and testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

As the landlord was served with the Notice of Hearing, Application and Amended Application and did not attend the hearing, I consider this matter to be unopposed by the landlord. However, I find the tenant's claims are only partially successful for the reasons set out below.

Rent Increase:

Section 41 of the *Act* states that a landlord must not increase rent except in accordance with Part 3 of the *Act*.

Section 42(2) of the *Act* requires the landlord to give a tenant notice of a rent increase at least three months before the effective date of the increase.

Section 42(3) of the *Act* requires notice of a rent increase to be in the approved form.

Section 43(1) of the *Act* restricts the amount of the rent increase to an amount that is calculated in accordance with the Residential Tenancy regulations.

Section 43(5) of the *Act* allows a tenant to recover the increase in rent that does not comply with Part 3 of the *Act*.

As the tenant has only made a claim for the sum of \$250.00 for the \$50.00 rent increase starting the month of October 2016, I do not need to make any findings regarding the first rent increase.

Based upon the testimony of the tenant, I find that the second rent increase imposed by the landlord did not comply with Part 3 of the *Act*. In making this finding I have taken into consideration the fact that the landlord did not give written notice of a rent increase in the approved form as the tenant was only given verbal notice. Furthermore, I find that the landlord did not give notice to the tenant at least three months before the effective date of the rent increase. Finally, I find that the amount of the rent increase was in excess of the amount authorized by the Residential Tenancy Regulations. I also note that pursuant to Policy Guideline #37, payment of a rent increase in an amount more than the allowed annual increase does not constitute an agreement to a rent increase in that amount.

As the rent increase did not comply with Part 3 of the *Act*, I find that the tenant is entitled to a monetary order in the amount of \$250.00 for the \$50.00 illegal rent increase collected for each of the months starting October 2016 through to February 17, 2017.

Two Month Notice:

Pursuant to Section 51(1) of the *Act*, a tenant who receives a Two Month Notice is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent to one month of rent payable under the tenancy agreement.

I find that the tenant was served with a Two Month Notice with an effective date of March 31, 2017. Although the Two Month Notice is unsigned and has an effective date that is earlier than two months after the date the tenant received the Notice, the tenant is not disputing it. If the tenant had disputed the Two Month Notice I would have found it invalid. Since the tenant is not disputing the Two Month Notice, I find that the tenant is entitled to receive the sum of \$525.00 which is the rent that the landlord collected for the month of March 2017.

Security Deposit:

Section 19(1) of the *Act* prohibits a landlord from requiring a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

Section 19(2) of the *Act* authorizes a tenant to recover the overpayment if a landlord accepts a security deposit that is greater than $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

Based upon the undisputed testimony of the tenant that rent at the start of the tenancy was \$450.00 each month, I find that the landlord accepted a security deposit in an amount that was greater than that authorized by section 19(1) of the *Act*.

I find that the landlord was only allowed to accept a security deposit in the amount of \$225.00 which was the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. Therefore, I find that the tenant is entitled to recover the amount of \$225.00 from the landlord for the overpayment.

Pursuant to section 38 of the *Act*, the landlord's obligation to return the security deposit or to make a claim to retain it does not arise until after the end of the tenancy and after the tenant has provided their forwarding address in writing. As the tenancy has not yet ended, I find that the tenant is not entitled to the return of the balance of the deposit. At the end of the tenancy the landlord will have the opportunity to deal with the matter of the balance of the security deposit in accordance with the *Act*.

Filing Fee:

As the tenant's application has been substantially successful, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Based upon the foregoing I find that the tenant is entitled to a monetary award in the amount of \$1,100.00 as follows:

Rent Increase paid for October 1, 2016 to February 2017 (5 months x \$50.00)	\$ 250.00
Rent paid for March 2017	\$ 525.00
Overpayment of the Security Deposit	\$ 225.00
Filing Fee	\$ 100.00
Total Monetary Award	\$1,100.00

Conclusion

The tenant is granted a monetary order in the amount of \$1,100.00 for the unlawful rent increase; for the rent paid for March 2017; for the overpayment of the security deposit and for the filing fee. The monetary Order must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 4, 2017

Residential Tenancy Branch