



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested compensation for rent paid in excess of the allowable amount as well as monetary compensation in the amount of \$17,510.00 for breach of quiet enjoyment and harassment.

The hearing was conducted by teleconference on May 24, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Tenant be compensated for rent which was paid in excess of that permitted by the *Residential Tenancy Agreement* and *Residential Tenancy Regulation*?
2. Should the Tenant be compensated for breach of quiet enjoyment?

Background and Evidence

The Tenant testified as follows. He confirmed that his tenancy began January 2011. The Tenant stated that his original rent was \$900.00 which included his cable, once a week laundry, hydro, and internet.

The Tenant stated that the Landlord increased his rent by \$40.00 on February 2015 to \$940.00. The Tenant stated that the Landlord was only able to raise the rent by 2.9% at that time and as such the Landlord charged the Tenant \$17.50 more than was permitted from February 2015 to May 2017 for a total of 28 months, or \$490.00. The Tenant confirmed he sought compensation for amounts paid over the permitted amount.

The Tenant stated that he also sought the sum of \$17,510.00 for "loss of quiet enjoyment, pain and suffering, harassment and repeated eviction notices because he believes the Landlord has abused the system". The Tenant stated that he has been to five Residential Tenancy Branch hearings in the last ten months. The Tenant claimed that he has been a victim of the Landlord's inappropriate behaviour.

The Tenant stated that he sought this sum because he wanted to make sure that the Landlord was not able to harass people in the future. He stated that the Landlord issued notice after notice and as a result their lives have been completely turned upside down.

The Tenant stated that his health and his wife's health have been negatively affected. The Tenant stated that the Landlord also banged on the floor at all hours of the day which affected their ability to sleep. The Tenant stated that the Landlord also made false allegations to the police.

The Tenant stated that "it is quite evident" they have been harassed by the Landlord simply by virtue of the number of hearings initiated by the Landlord.

The Tenant stated that he continues to reside in the rental unit although an Order of Possession has been granted which is effective May 31, 2017.

The Landlord testified as follows. He confirmed that the monthly rent was \$900.00 per month. The Landlord stated that he increased the Tenant's rent by \$40.00 in January of 2016, not 2015 as the Tenant claimed. He confirmed that he did not issue a Notice of Rent Increase in the approved form.

In response to the Tenant's claim for \$17,510.00 for breach of quiet enjoyment the Landlord stated that he has a two and a half year old son who wakes up early and plays and bangs on the floor with his toys at times. The Landlord also stated that he has seven family members living upstairs including his wife, his parents, and his three children such that any noise is due to the number of people residing upstairs, not any conscious attempt to annoy the Tenant.

The Landlord also stated that he continues to want to move his family into the basement as they need the space. The Landlord stated that he contacted the Residential Tenancy Branch, and on their advice he issued a 2 Month Notice to End Tenancy for Landlord's Use. He stated that

when he lost the second time he hired a lawyer because he believed his English speaking skills were affecting his ability to present his case at the Branch.

Counsel for the Landlord submitted as follows:

He stated that the Landlord admitted that the rent increase was January 2016 for \$40.00 per month and the onus is on the Tenant to prove it increased at another time.

Counsel also stated that the Tenant applied to receive the amount he paid over the allowable amount, and should not be permitted to claim all of the rent increase.

Counsel submitted that the Tenant also failed to prove his claim for \$17,510.00 for loss of quiet enjoyment, harassment and pain and suffering.

Counsel conceded that while there have been numerous hearings in respect of this tenancy, there was no finding that the Landlord exercised his legal rights in bad faith. Counsel also submitted that the *Act* permits an Arbitrator to dismiss frivolous or vexatious claims. While the Landlord did not succeed at the hearings, his claims were not found to be frivolous.

Counsel further submitted that the Tenant is seeking to punish the Landlord and to seek costs which are not allowable under the *Residential Tenancy Act*.

Counsel also responded to the Tenant's claim that the Landlord issued an eviction notice for the same reasons "over and over again". He stated that while the first three hearings were based on the Landlord issuing a 2 Month Notice to End Tenancy, the Landlord was relying on advice he received from the Residential Tenancy Branch that they could reissue a 2 Month Notice in the event he wanted his family to reside in the rental unit.

Counsel submitted that the Landlord should not be punished for exercising his rights under the *Act* and that as long as the parties are exercising their rights in good faith, they should not be punished for making applications.

Counsel also noted that the most recent hearing, on May 15, 2017, dealt with a 1 Month Notice to End Tenancy for Cause, and while the Tenant's application was dismissed because he applied outside the time limit, the Landlord had ample evidence regarding the reasons for issuing the Notice.

Counsel stated that there was a lot of stress between the parties, but it was mutual.

He further submitted that if there is any damage, or allowable claim, (which he confirmed was strongly denied) that should be limited to the one hearing in which the Landlord made an application which was found to be *Res Judicata*.

In reply to the Landlord's submissions the Tenant stated that he is a "very simple man with a lot of health issues because he had a car accident and a stroke."

The Tenant then stated that the Landlord lied under oath when he said he raised the rent by \$40.00 in January of 2016, as during the July 19, 2016 hearing he admitted he raised it to \$975.00.

The Tenant confirmed that he pays \$35.00 for specialty channels such that his rent is actually \$900.00.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenant has the burden of proof to prove his claim.

I will first deal with the Tenant's claim for reimbursement of any amounts paid in excess of the allowable rent increase.

In the hearing before me the parties disputed the date the rent increase commenced.

In her Decision dated October 6, 2016, Arbitrator Reid found that the Landlord increased the Tenant's rent by \$40.00 as of February 2015; her Decision reads in part as follows:

"...Although the landlord denied that he sought to increase the rent by \$200.00 per month as alleged by the tenants, I find the landlord to be less credible than the tenant. I make this finding considering the landlord provided inconsistent testimony as to the current monthly rent: initially testifying that the monthly rent is \$935.00 and later acknowledging that he has been collecting \$975.00. Further, I found the landlord's testimony that he left the rent increase of \$40.00 entirely up to the tenants to decide to be very unlikely.

I also note that the tenant provided testimony concerning the increased rent of \$975.00 and the landlord's attempts to increase the rent a further \$200.00 consistently during the hearing and consistent with the testimony he provided in the previous dispute resolution proceeding.

Having found the tenant more credible than the landlord I accept the tenant's version of events that they have been paying \$975.00 since February 2015 and the landlord sought to increase the rent a further \$200.00 in January 2016..."

Consequently, I find that the issue relating to the date the rent increase commenced has already been decided. As explained by Arbitrator Hendrick in her Decision of December 23, 2016, I am precluded, by the principle of *res judicata* to disturb this finding.

Part 3 of the *Residential Tenancy Act* deals with rent increases and reads as follows:

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection (3), or
 - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4) [Repealed 2006-35-66.]
- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

I find that the \$40.00 rent increase does not comply with Part 3. The Landlord failed to issue a Notice of Rent Increase in the approved form, the rent increase amount was in excess of that permitted by the *Residential Tenancy Act*, and the rent was raised without proper notice. In all, the Landlord failed to comply with Part 3.

I find that the Tenant continued to pay this illegal rent increase until May 2017, the month in which this hearing occurred. Section 43(5) provides that a Tenant is entitled to recover the increased rent payments and I therefore award the Tenant recovery of *all* the overpayment in the amount of **\$1,120.00** (28 months x \$40.00). I am not persuaded by counsel's argument that the Tenant should only be able to recover the amount in excess of the allowable amount. The Landlord failed to comply with Part 3 in its entirety and should not be able to benefit from receiving the allowable amount from his illegal increase.

I will now address the Tenant's claim for monetary compensation for breach of his right to quiet enjoyment.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlord breached section 28 of the *Act*.

The Landlord provided copies of the Decisions relating to the July 19, 2016, October 6, 2016, December 6, 2016 and December 23, 2016 hearings. In each of these applications, the Landlord sought an Order of Possession. While the Landlord was unsuccessful in these hearings before the Branch, I agree with counsel that the Landlord should not be punished for exercising his legal rights.

As noted previously, to be successful in his claim for damages, the Tenant must prove that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the *Act* or agreement. In this case, I find the Tenant has failed to prove he suffered damages as a result of the Landlord's violation of the *Act* or the agreement.

Further, even in the event I had found the Landlord had breached the *Act*, or the tenancy agreement, I find the Tenant has failed to provide proof of the actual amount required to compensate the Tenant for the alleged loss or to repair the alleged damage. The Tenant did not provide any evidence or submissions to support his claim for \$17,510.00.

For these reasons I dismiss the Tenant's claim for monetary compensation in the amount of \$17,510.00 for breach of his right to quiet enjoyment.

Conclusion

The Tenant is granted a Monetary Order in the amount of **\$1,120.00** representing recovery of the \$40.00 illegal rent increase from February 2015 to May 2017. The Tenant must serve the

Monetary Order on the Landlord and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

The Tenant's claim for \$17,510 for breach of his right to quiet enjoyment is dismissed.

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 22, 2017

Residential Tenancy Branch