



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act* for loss; and
- an Order for the landlord to comply with the *Act* pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") by way of Canada Post Registered Mail. In accordance with sections 88 and 89 of the *Act*, I find that landlord was duly served with the Application and evidentiary package.

At the outset of the hearing, the landlord noted that the tenant had misspelled his last name. Pursuant to section 64 of the *Act* I have amended the Style of Cause to reflect the proper spelling of the landlord's name.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Should the landlord be ordered to comply with the *Act*?

### Background and Evidence

Testimony was provided to the hearing that this tenancy began in March 2011 and ended in September 2016. A copy of the residential tenancy agreement supplied to the hearing shows that rent was \$1,000.00. Over the course of the tenancy, this rent rose to \$1,100.00.

The tenant is seeking a Monetary Order of \$4,800.00 in satisfaction of rent she states she overpaid between September 2012 and September 2016. This amount represents \$100 of extra rent/month x 48 months.

The tenant argued that her lease was only for \$1,000.00 and she should not have faced a rental increase of this magnitude. Furthermore, she contended that it was her understanding she would only pay 60% of the hydro bills, but ended up paying all of them. The tenant explained that at no point was she given a notice of rent increase and she never signed anything agreeing to a rental increase.

In her written submissions, the tenant explained that she applied for dispute resolution in November 2016, shortly after the end of this tenancy. Furthermore, the tenant testified that, at various times, she housed her daughter and allowed her guests to stay there.

The landlord acknowledged that the tenant faced a rental increase of \$100.00 over the time of her tenancy; however, he explained that the tenant had taken on boarders without permission, had in fact moved into a separate, larger unit, and verbally agreed to this rental increase after having been approached by the landlord with his concerns around the increased wear and tear of the occupants that she was now accommodating in her unit.

During the course of the hearing, the tenant acknowledged that she spoke with the landlord and agreed that a \$100.00 increase in her rent was reasonable; however, she contended that this amount became unreasonable when the other occupants of the rental unit ceased living in the rental unit.

The landlord argued that by paying the additional \$100.00 per month, the tenant has shown that in fact she agreed to the payment. In written submissions, the landlord states, "She had every opportunity to contact the Residential Tenancy Board to dispute the payment and in fact when she did this in 2012 they advised her to withhold the amount and dispute it. She chose not to do that. She only decided to pursue the matter after she moved out of our residence 4 years later."

The landlord continued by arguing that the tenant should be estopped from recovering these funds. The landlord explained that the tenant's actions demonstrate her acknowledgement that this rent increase was due.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator 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 onus is on the tenant to prove her entitlement to a claim for a monetary award.

The tenant is seeking a Monetary Order of \$4,800.00 in satisfaction of \$100.00 rent she overpaid for 48 months.

During the hearing the landlord explained that the tenant should be estopped from making a claim seeking reimbursement for funds that she has already paid. Promissory Estoppel is a legal concept best articulated by the learned English judge, Lord Denning. In the famous *Central London Property Trust Ltd v. High Trees House Ltd* [1947] KB 130 (or the *High Trees* case) Lord Denning explained that, "A promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on."

Based on the facts presented at the hearing and in written submissions, it is evident that the tenant promised to pay an extra \$100.00 rent per month, in exchange for the landlord agreeing to accommodate changes in the nature of the tenancy based on the increased number of occupants in the rental unit. The landlord relied on the tenant's continued payment of this sum as a continuation of the tenancy under these new terms. It would be inequitable for the tenant to now renege on this agreement.

The tenant spent a large amount of time describing text messages that were exchanged between the parties. The tenant sought to establish that these text messages indicate awareness on the landlord's part of the amount of rent that she overpaid. These text messages do not present any new evidence, not presented in oral testimony.

I find that the tenant, in paying \$100.00/month for a 4 year period, without any complaint to the landlord or dispute before the *Residential Tenancy Branch* waived of her right to claim these funds retroactively. She made a promise to pay to avoid the landlord acting on the change in circumstances related to the tenancy. The landlord relied on the tenant's promise to pay more, allowing the tenancy to continue. The tenant is estopped

from pursuing this matter and the tenant's application for a monetary award is dismissed.

Conclusion

The tenant's application for a Monetary Order 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: June 12, 2017

---

Residential Tenancy Branch