



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented at the hearing by his counsel, S.C.R. (the "landlord").

The tenant gave sworn testimony that an Application for Dispute Resolution was sent by way of Canada Post Registered Mail to the landlord on May 16, 2017. The landlord acknowledged receipt of this package. Pursuant to section 89 of the *Act* the landlord is found to have been served with this document in accordance with the *Act*. Only the landlord supplied written evidence to the hearing.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order?

Can the tenant recover the filing fee?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2007 and ended on October 31, 2016. The tenant disputed the starting date of this tenancy and placed it in 2005, but he did agree on the end date.

Rent began at \$1,500.00 and rose to \$1,600.00 by the end of the tenancy. A security deposit of \$750.00 was collected at the outset of the tenancy and was returned to the tenant following the conclusion of the tenancy.

The tenant provided testimony that he sought a Monetary Order of \$3,646.00 from the landlord. A Monetary Order worksheet provided to the hearing as part the tenant's application outlined his claim as follows:

Items	Amount
Interest on Security Deposit	\$26.00
Increased Rent	420.00
Two Month's Rent	3,200.00
Total =	\$3,646.00

The tenant testified that this amount of \$26.00 was based on unpaid interest that had accrued on the security deposit which was held by the landlord during the period of the tenancy. The tenant said he had received a cheque from the landlord for \$12.41 from a company, and that this cheque was signed by the landlord. This cheque which was meant to represent interest earned on the security deposit was not produced for the hearing. Further to this amount requested for interest, the tenant argued that a rental increase he received of \$100.00 during the course of the tenancy was above the amount prescribed by the *Regulation*. The tenant confirmed that when he received the rental increase he did not file an application for dispute resolution to challenge this new amount of rent. He explained that he did not file an application for dispute resolution challenging the increase when it was issued to him because he was unaware of the existence of the *Regulation*.

The tenant also sought \$3,200.00 in satisfaction of two month's rent as prescribed by the *Act*; however, no specific section of the *Act* was cited as authorizing this claim. He argued that the landlord did not use the rental unit for its intended purpose, following the tenant vacating it. The tenant confirmed that no 2 Month Notice to End Tenancy had been served on him. The tenant stated that he signed a Mutual Agreement to End Tenancy in August 2016 on the understanding that the landlord was moving his mother-in-law into the rental unit. A copy of this agreement was provided to the hearing. The tenant testified that as per his agreement with the landlord, he did not pay the final month's rent for his occupation of the rental unit.

In place of testimony, the landlord provided a sworn affidavit to the hearing. This affidavit noted, among other things, that the relationship between the landlord and the tenant had broken down, and as a result of this, the parties signed a Mutual Agreement to End Tenancy. In his affidavit, the landlord confirmed that he did briefly discuss potentially moving his mother-in-law into the rental unit; however, he explained that at no time did he indicate with any certainty that she would be moving in.

As part of his evidentiary package, the landlord produced a copy of the Mutual Agreement to End Tenancy signed by both parties, and a copy of a cheque for \$14.12 mailed to the tenant in reflection of interest that had accrued on the security deposit over the period of the tenancy.

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. When a party makes a claim for damage or loss, the burden of proof lays with the applicant, in this case the tenant to establish the claim on a balance of probabilities. To prove a loss, the applicant 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 other party 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 applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant supplied only oral testimony to the hearing. The tenant stated that he should be compensated for an illegal rent increase, for improperly calculated interest on a security deposit, and for 2 month's rent because the landlord did not use the rental unit to accommodate a close family member after having signed a Mutual Agreement to End Tenancy.

Starting with the tenant's request for compensation of 2 month's rent; I turn to section 51 of the *Act*. This section provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. It explains that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. This compensation structure only applies to instances where a landlord has issued a 2 Month Notice to End Tenancy to a tenant.

Testimony was provided by both parties that the landlord did not serve the tenant with a 2 Month Notice to End Tenancy and that this tenancy ended on the basis of a Mutual Agreement to End Tenancy. There is no basis for any compensation under the *Act* when the parties have entered a Mutual Agreement to End Tenancy. The tenant's application for compensation for 2 months' rent is therefore dismissed.

The tenant is also seeking compensation of \$420.00 for overpaid rent and \$26.00 for miscalculated interest on a damage deposit. The tenant explained that he wanted compensation for having overpaid rent based on a rental increase that was beyond the amount prescribed under the *Regulations*. The tenant acknowledged paying this rent for some time during the tenancy and stated that he was unaware that it was an illegal rent increase until the tenancy had concluded. He explained that for this reason that he did not file an application for dispute resolution challenging the increase when it was issued to him.

Section 43(1)(c) permits a landlord to increase rent above the legislated amount if the tenant agrees so in writing. *Residential Policy Guideline #37* notes that, "a landlord who desires to increase a tenant's rent by more than the amount of the allowed rent increase can ask the tenant to agree to an increase that is great than the allowed amount...If the tenant agrees in writing to the proposed increase...the landlord must still follow requirements regarding the timing and notice of rent increases...payment of rent increases in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount."

While I am satisfied that the landlord may have increased the rent in excess of what is permitted pursuant to the *Act* or *Policy Guidelines*, little evidence was presented indicating when this rental increase began, its size and how long it lasted. The tenant presented no documentary proof but recalled this increase represented a period of time between May and October 2016, a six-month period. If the rent rose by \$100.00/month

during this time, then it would represent an amount of \$600.00, not \$420.00. As mentioned previously, the burden of proof rests with the party claiming compensation. Insufficient detail was provided to the hearing as part of the tenant's oral testimony to show with any degree of accuracy how this figure of \$420.00 was reached. I am therefore, dismissing the tenant's application for compensation for a rental increase above the legislated amount.

The final matter requested by the tenant was a monetary award of \$26.00 in reflection of unpaid interest that had accrued on the tenant's security deposit. A copy of the residential tenancy agreement entered into between the parties was not provided to the hearing, nor was a copy of a cheque that the landlord had sent to the tenant. Without any physical evidence as to when the security deposit was paid or when it was returned to the tenant, I am unable to ascertain the amount of interest that would have been payable to the tenant at the end of this tenancy, and I must dismiss this portion of the tenant's application.

As the tenant was unsuccessful in his application for a monetary award, he must bear the cost of his own filing fee.

Conclusion

The tenant's application for a Monetary Order is dismissed. The tenant must bear the cost of his own filing fee.

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 2, 2017

Residential Tenancy Branch