Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, AAT, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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.

As the tenant confirmed that they received the 2 Month Notice of August 17, 2019 posted on their door by the landlord, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's original dispute resolution hearing package in late August or early September 2019, I find that the landlord was duly served the tenant's original hearing package in accordance with section 89 of the *Act.* As the landlord also confirmed receipt of the tenant's amended application for dispute resolution sent by the tenant by registered mail on September 19, 2019, I also find that this amended application was served to the landlord in accordance with section 89 of the *Act*. Since

both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

At the commencement of the hearing, the parties agreed that the tenant surrendered vacant possession of this rental unit to the landlord (or the subsequent purchaser of this rental unit) on October 20, 2019. For this reason, the tenant withdrew their application for the following:

- cancellation of the landlord's 2 Month Notice;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests.

These three portions of the tenant's application are hereby withdrawn.

Preliminary Issue - Tenant's Amended Application

The tenant's original claim for a monetary award of $6,125.00 sought a monetary award for what the tenant maintained was an illegal rent increase from September 2016 until the present. The tenant amended that application on September 16, 2019, to increase that amount by $5,000.00 for harassment that the tenant maintained had occurred during the course of this tenancy.

The Residential Tenancy Branch's (the RTB's) Rules of Procedure 2.3 and 4.1 provide guidance to arbitrators with respect to applicant's inclusion of unrelated matters in claims and amendments to existing applications. Rule of Procedure 2.3 reads as follows:

> *Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.*

In the tenant's original claim, the tenant was disputing both the landlord's 2 Month Notice and seeking a monetary award for an alleged illegal rent increase. I find that the tenant's subsequent amendment identified a significantly different matter, the alleged harassment that had occurred during this tenancy, and one which would more appropriately be addressed separately should the tenant plan to proceed with such an allegation. For this reason and after considering the Rules of Procedure cited above, I have decided to exercise my discretion and dismiss the tenant's amended application

for a monetary award for harassment with leave to reapply, as I do not find this part of the tenant's amended application sufficiently related to the original issues cited in the tenant's application.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including receipts, invoices, miscellaneous letters and documents, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant gave sworn testimony that they moved into a manufactured home on this property where the landlord now resides in 2010, with an oral agreement with the previous owner of this property. Although of little consequence to the tenant's claim, the landlord maintained that the tenant did not move into this manufactured home until approximately 2014. When this tenancy first began, the parties agreed that the monthly rent, which included storage of the tenant's vehicles, was set at $650.00 per month, payable on the 17th of each month.

The tenant maintained that they paid a $600.00 security deposit to the previous landlord. By contrast, the landlord testified that they were unaware of any such security deposit having been paid by the tenant when the landlord purchased this property.

When the previous owner, a friend of the landlord, passed away, this tenancy continued. The landlord said that they purchased the property in an estate sale in February 2016. Although the landlord maintained that they attempted to have the tenant agree to a written tenancy agreement, no such written tenancy agreement was established between the parties.

The tenant provided sworn testimony and written evidence that in September 2016, the landlord advised the tenant that they would be requiring monthly payments of $825.00, instead of the $650.00 the tenant had previously been paying.

The landlord provided sworn testimony and written evidence that the $175.00 increase at that time was not an actual rent increase. The Respondent asserted that $100.00 of this increase was for the tenant's storage of additional vehicles on the premises because the original agreement between the tenant and the previous owner of the property only allowed for the storage of two vehicles on the "trailer/pad rental." On this point, the tenant provided undisputed sworn testimony that they had a large bus, a fifth wheel and three other vehicles on the site during the previous agreement when the previous owner passed away. The landlord gave undisputed sworn testimony and provided written evidence that the other $75,00 of this increase was to cover utilities of water and hydro that had been paid to the previous landlord on "a cash basis" generally within a few months of these bills having been received by the previous landlord.

The tenant maintained that they were presented with this rent increase shortly after the landlord purchased the property, and advised that they would have to vacate the premises if they did not comply with the landlord's request. The tenant said that they only learned of this rent increase at the time that they were attempting to make their September 2016 rent and storage payment of $650.00. The tenant gave undisputed sworn testimony that the landlord told them at that time that the $650.00 payment was "not enough." The tenant said that on such short notice they had little option at that time, but to pay the requested increase.

The tenant gave undisputed sworn testimony that the landlord requested another increase in the monthly payments to $1,000.00 when they paid rent in June 2019. Only after contacting the RTB after that conversation did the tenant become aware that the landlord had contravened the rent increase provisions of the *Act* in 2016. Again, the tenant testified that the landlord advised them that the $825.00 payments being made in 2019 were "not enough."

The tenant's original application sought a monetary award of $6,125.00 for the landlord's alleged illegal rent increase, which the tenant asserted began in September 2016 for a 35 month period. The tenant sought the recovery of $175.00 per month for the 35 months commencing on September 17, 2016.

The parties agreed that the tenant paid $850.00 for each of the months from September 17, 2016 until September 17, 2019, the last monthly payment made by the tenant before they vacated the rental unit. The parties also agreed that the landlord has not yet provided the tenant with any compensation equivalent to the one month rent that the tenant is entitled to receive as a result of receiving the 2 Month Notice.

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 on the balance of probabilities that the landlord contravened the *Act*, the regulation or the tenancy agreement, and that the contravention entitled the tenant to a retroactive reduction in rent paid during the course of this tenancy.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Part 3 of the *Act* outlines the provisions whereby a landlord may obtain rent increases during a tenancy. Sections 41 to 43 of this Part of the *Act*, read in part as follows

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 payable for the rental unit;

(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.

In this case, there is no evidence that the landlord issued any notices of rent increase to the tenant. Although the landlord maintained that the oral agreement between the parties that commenced this tenancy only entitled the tenant to park two vehicles on the pad rental suite, the tenant disputed that testimony and evidence. The tenant said that they had five vehicles on the property before the landlord took possession of the property. The tenant also maintained that their payments to the previous landlord and the current landlord were accepted for rent and storage of these vehicles. The landlord's written evidence alleged that this number had increased over time and that there were 17 motorized vehicles or equipment on the property by September 1, 2019.

When disputes arise regarding sworn testimony as to the provisions of the tenancy agreement, the best evidence is the actual wording of the relevant portion of the written Residential Tenancy Agreement (the Agreement). Landlords are responsible for preparing written tenancy agreements, which often clarify the terms of the tenancy so as to avoid these types of disputes. In this case, there was an existing oral tenancy agreement in place before the landlord purchased this property. While the landlord may very well have tried to establish a written agreement with the tenant, the failure to obtain a signed agreement kept the existing oral agreement in place entered into between the tenant and the previous owner of this property.

In considering this matter, I note that the landlord did not issue anything in writing to the tenant in 2016 to support the landlord's assertion that $100.00 of the $175.00 increase was for the tenant's storage of additional vehicles on the landlord's property until after the landlord received the tenant's dispute resolution application. At the hearing, the landlord did not dispute the tenant's sworn testimony that they were first advised that the monthly payments would be increasing by $175.00 in September 2016. The landlord did not dispute that the tenant was poised at that time to pay the landlord the usual monthly rent they had been paying since they moved into this manufactured home

years earlier. The landlord had been accepting $650.00 payments from the tenant between February 2016, when the landlord purchased the property, and September 2016. I also note that the rent receipt entered into written evidence by the landlord gave no breakdown of storage and utilities in the receipts for the period from June 17, 2019 to July 17, 2019; it was simply identified as rent paid for that period.

Although the landlord referred in their written evidence to a limit of two vehicles on the "pad rental", this is a residential tenancy and not a manufactured home park tenancy. This is because the landlord owned both the property where the manufactured home was located and the manufactured home itself. In this context, the tenant would not be bound to specific provisions of pad rental parking that would be more typical of situations covered by rentals pursuant to the *Manufactured Home Park Tenancy Act*.

Without any written evidence to support the landlord's assertion that the $100.00 increase included in the $175.00 was for storage and not rent, I find on a balance of probabilities that the tenant has established that the landlord obtained a rent increase that contravened Part 3 of the *Act*. I also accept the tenant's evidence that they believed that they had few options at that time, but to pay the increase demanded by the landlord, and that they only became aware of their legal rights pursuant to the *Act*, when the landlord attempted in 2019 to once again increase their monthly payments without legal authority to do so.

Under these circumstances and pursuant to sections 43 and 65 of the *Act*, I award the tenant a retroactive rent reduction equivalent to $100.00 per month from September 17, 2016 until the end of this tenancy. This results in a monetary award in the tenant's favour of $3,700.00 for the 37 month period between September 17, 2016 and October 16, 2019.

The landlord has provided sworn testimony and written evidence that the remaining portion of the $175.00 increase obtained as of September 17, 2017 was for the tenant's payment of utilities, which included water and hydro. The tenant did not dispute the landlord's evidence that the tenant had been making these payments in cash to the previous landlord every few months. On this basis, it would seem that the increase of $75.00 for utilities was more in the nature of a restructuring of how the tenant was paying for these utilities in a more orderly and regularized fashion and not an actual additional charge. Since the tenant bears the burden of proof with respect to their claim, I am not satisfied on a balance of probabilities that the tenant has established that the $75.00 increase for utilities that formed part of the landlord's $175.00 monthly

increase in September 2016 did constitute an illegal rent increase. For this reason, I dismiss this portion of the tenant's application without leave to reapply.

Based on the above determinations, I find that the correct monthly rent (including rent, storage and utilities) for this tenancy from September 17, 2016 until this tenancy ended was $700.00. This includes the $625.00 that the tenant was paying prior to that date and the $75.00 utility charge that the landlord commenced including in the rent as of that date, and which the tenant agreed to pay.

Section 51 of the *Act* reads as follows:

> ***51*** *(1) 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...*

In this case, as the parties agreed that the landlord has not provided the tenant with compensation pursuant to section 51(1) of the *Act*, I issue a monetary award in the tenant's favour in the amount of $700.00, the correct amount of rent that was to have been charged during the final three years of this tenancy. This amount includes rent, storage and utilities that the tenant should have been paying by the end of this tenancy.

As the landlord was successful in this application, I also find that the tenant is entitled to recover the $100.00 filing fee paid for this application from the landlord.

Conclusion

I issue a monetary award in the tenant's favour under the following terms, which allows the tenant to receive a retroactive reduction of payments made during the course of this tenancy, and to recover their filing fee:

Item	**Amount**
Overpayment of Rent $3,700.00 (37 months @ $100.00 per month =	$3,700.00

$3,700.00)	
Compensation pursuant to Section 51(1) of the *Act*	700.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$4,500.00**

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenant's application to cancel the 2 Month Notice, to obtain an order requiring the landlord to comply with the *Act*, the regulation or tenancy agreement, and to allow access to or from the rental unit are withdrawn.

The tenant's amended application for a monetary award of $5,000.00 for harassment has been severed from this application, and was not considered as part of the matters properly before me. The tenant is at liberty to submit a new application regarding this issue.

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: October 24, 2019

Residential Tenancy Branch