



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, MNDCT, FFT

Introduction

On May 15, 2019, the Tenant made an Application for Dispute Resolution seeking to dispute a rent increase pursuant to Section 41 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended this final, adjourned hearing. The Landlord attended this hearing as well, with P.L. and J.C. attending as agents for the Landlord. In addition, K.S. and M.V. attended the final, adjourned hearing as witnesses for the Landlord. All in attendance, except for P.L. and J.C., provided a solemn affirmation.

The Tenant requested in his Application that he was seeking an Order to comply, to dispute a rent increase, and to recover the filing fee. However, as he had vacated the rental unit, the Tenant was advised that his request for an Order to comply would not be addressed as it is a moot point. In addition, he was advised that his request to dispute a rent increase could be addressed, but as he did not request any monetary compensation in the details of his dispute, nor did he indicate this appropriately in his Application or amend his Application to reflect this, even if it was determined that there was an illegal rent increase, no monetary awards could be granted. However, as P.L. advised that the Landlord understood the nature of the Tenant’s dispute, there was no opposition with addressing the Tenant’s monetary claims for compensation pursuant to Section 67 of the *Act* as well.

This Application was originally set down for a hearing on June 28, 2019 at 9:30 AM. As there were multiple adjournments, the following is a brief summary of the hearings and what circumstances necessitated this Application to be prolonged over such an

extensive period of time. A more thorough explanation of each hearing will be detailed in the Background and Evidence section of this Decision.

At the start of the original hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. All parties acknowledged these terms.

This original hearing on June 28, 2019 was subsequently adjourned to be heard on September 12, 2019 as there was not enough time to hear all of the claims at the original hearing. Generally, Dispute Resolution proceedings are scheduled for one hour, which is typically enough time for an Applicant to make their claim. The parties were afforded one hour and 23-minutes to address the issues at hand. The majority of the hearing time was provided to the Tenant to present the issues in his Application.

However, when P.L. was provided an opportunity to respond and make submissions with respect to the Landlord's position relative to the Tenant's claims, the Tenant would frequently interject and would be combative and argumentative. Each time, the Tenant was reminded that he had an opportunity to present uninterrupted, that he should return the same courtesy to the Landlord, and that he should refrain from continuing to act in this manner. The Tenant would apologize after each outburst, only to continue to act in the same manner when P.L. would resume making his submissions. This behaviour contributed to the length of the initial hearing and the inability for either party to fully make submissions on the nature of the Application.

The September 12, 2019 hearing proceeded, and the Tenant called into the hearing 10 minutes late. The Landlord and his representatives then called in to attend the hearing a minute after that. This adjourned hearing was also scheduled for one hour. As the parties were late and as there had been some discussion previously about resolution, the parties elected to spend the majority of this hearing time on settlement discussions. As settlement offers were proposed but a settlement was not reached, this adjourned hearing was subsequently adjourned again to be heard on December 13, 2019 as there was not enough time to address all of the Tenant's claims at this adjourned hearing. The parties were afforded one hour and seven-minutes at this hearing to address the issues at hand.

Due to the complex nature of the Application and the manner with which the Tenant prolonged the original hearing, the December 13, 2019 hearing was scheduled for extra time in an attempt to finalize the submissions from the parties. The parties again attempted to settle their dispute, and this was discussed for a portion of the hearing. As a settlement was again not successful, the hearing proceeded where the Tenant was provided an opportunity to continue to present the nature of his Application. When he had finished presenting his case, P.L. commenced presenting the Landlord's submissions and cross-examined the Tenant.

Similar to the manner with which the Tenant acted in the previous hearings, his combative, belligerent, and argumentative nature, his routine of yelling over P.L., and his vague answers to P.L.'s questions unnecessarily delayed the proceeding. Despite the Tenant being cautioned multiple times again, P.L. was unable to finish making his submissions. Consequently, this hearing was subsequently adjourned again to be heard on February 27, 2020 as there was not enough time to provide the Landlord with an adequate opportunity to present submissions in response to the Tenant's claims. The parties were afforded two hours and 14-minutes at this hearing to address the issues at hand.

In an effort to conclude this Application, the February 27, 2020 was scheduled for extra time as well. However, at the commencement of this hearing, the Tenant advised that he had to attend to a personal matter and would not be available for the entire hearing time, so he requested an adjournment. The Landlord had no objections to this adjournment request. In order to make the most efficient use of the limited time that was now available, the parties were advised that I would continue to hear from the Landlord, as P.L. was unable to finish making submissions at the last hearing.

To keep the parties focussed, and to prevent this Application from being further delayed and continuing on in the same manner, they were advised that they would each only have one hour to make their final submissions. P.L. was provided the remaining 20 minutes of this hearing time to make his submissions. He was advised that he would have 40 minutes left at the next hearing to finish presenting his submissions. The Tenant was advised that he would then be limited to one hour to make his closing arguments in the next hearing. The parties were afforded one hour and 10-minutes at this hearing to address the issues at hand.

The final, adjourned hearing on June 11, 2020 was scheduled for extra time as well. At the commencement of this hearing, the Tenant continued to state how the process was

unfair to him and that he should be provided more time to make his submissions. He was reminded that a significant part of the reason these hearings were prolonged was due to his behaviour and conduct at the previous hearings, and he was advised that all parties were granted an equal amount of time to make their submissions.

As a note, prior to this hearing, almost six hours had previously been spent in hearings in an attempt to hear submissions from both parties, so any claims that there was some bias against the Tenant or that he did not have ample opportunity to present his case were unfounded.

As per the previous hearing, P.L. was provided with the remaining 40 minutes of his time to make his final submissions. Once this 40-minute segment was complete, the Tenant was provided with his hour to make his final submissions. It should be noted that the Tenant was afforded extra time by P.L. to continue to make submissions, and each party was then provided with additional, equal time to submit responses to each other's final submissions. The parties were afforded two hours and 32-minutes at this final hearing to conclude the issues at hand. The aggregate time spent with the parties in hearings totalled almost eight and a half hours.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Was a rent increase implemented contrary to the *Act*?
- Is the Tenant entitled to monetary compensation for overpayments of rent due to an illegal rent increase?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. Below is a summary of pertinent exchanges between the parties but

they are not documented in detail as it would be too cumbersome in this Decision to note the exact, argumentative, evasive details of each exchange.

HEARING # 1

Neither party could agree on the basic details of the tenancy. The Landlord advised that the tenancy started on or around July 2010, that rent at the end of the tenancy was established at \$1,350.00 per month, and that it was due on the fifteenth day of each month. A security deposit was never paid. The parties never completed a signed, written tenancy agreement.

The Tenant advised that he moved into the rental unit in May 2010 and that the amount of rent was the source of this dispute. He confirmed that rent was due on the 15th day of each month and that a security deposit was never paid. It was apparent that the parties had known each other prior to the tenancy commencing and had an informal, amicable relationship.

The Tenant's position is that rent was \$1,150.00 per month at the start of the tenancy until December 2011 and that he paid this in cash without receiving receipts from the Landlord. Rent was then increased in 2012 to \$1,250.00 per month, by verbal request of the Landlord, and the Tenant paid this. However, as he did not get rent receipts, he then insisted on paying by cheque. He stated that the only receipt he received from the Landlord was one from February 2012 for \$1,250.00. Contrary to this statement though is his documentary evidence where he stated that rent for 2012 to 2014 was paid solely in cash and rent for 2015 was paid by cash and/or cheque. He advised that he had a good relationship with the Landlord until 2016 and that all their agreements were done verbally.

The Tenant referenced his written submissions where he stated that he did not have all of his bank statements prior to 2015, but he did attach some copies of cheques or drafts to indicate that some payments were made over the years. He provided a bank statement from April 2015 indicating that rent was paid in the amount of \$1,250.00, but rent was increased in 2016 to \$1,350.00 per month. However, he stated that for the months of July to October of 2016, he paid the Landlord \$1,750.00 per month for these four months as he had extra occupants staying there.

In addition, he stated that he paid the Landlord \$5,000.00 in April 2016 because the Landlord "forcibly" required him to pay this amount under threat of eviction due to

alleged non-payment of rent from 2013 to 2015. Without being issued receipts, he could not prove that rent was paid, and because of some personal circumstances, they were “helpless”, so he borrowed the \$5,000.00 from his daughter and “settled in 5,000.00” with the Landlord. He stated that rent from 2017 onwards was paid in the amount of \$1,350.00 per month and was paid by cheque. He submitted two bank statements from 2017, one copy of a rent cheque in February 2018, and one copy of a rent draft in April 2019 to support this position. As the Landlord never issued notices of rent increase, the rent increases imposed by the Landlord did not comply with the *Act* and were illegal. According to his Monetary Order Worksheet, he is seeking compensation in the amount of **\$18,800.00**, broken down as follows:

- \$5,400.00 for 54 months of a rent increase of \$100.00 per month from January 2012 to June 2016. Rent increased from \$1,150.00 to \$1,250.00 per month over this time period.
- \$5,000.00 for April 27, 2016 rent arrears lump sum payment.
- \$2,400.00 for 4 months of a rent increase of \$600.00 per month from July 2016 to October 2016. Rent increased from \$1,150.00 to \$1,750.00 per month over this time period.
- \$200.00 for 2 months of a rent increase of \$100.00 per month from November 2016 to December 2016. Rent increased from \$1,150.00 to \$1,250.00 per month over this time period.
- \$5,800.00 for 29 months of a rent increase of \$200.00 per month from January 2017 to May 2019. Rent increased from \$1,150.00 to \$1,350.00 per month over this time period.

P.L. advised that rent was established at \$1,250.00 per month from the start of the tenancy and that the only increase in rent happened in January 2017 to \$1,350.00, by mutual, verbal agreement. He stated that the Landlord did not provide receipts for cash payments as he did not know that he was required to, but he did provide the Tenant with the receipts that were submitted into documentary evidence, after being requested to by the Tenant. The Landlord's first receipt is dated February 20, 2012 and notes that the monthly rent from July 15, 2010 to December 15, 2011 was paid in full in the amount of \$1,250.00. Furthermore, the Landlord's second receipt is dated February 20, 2012 and notes that the rent for January 15, 2012 to February 15, 2012 was paid in the amount of \$1,250.00. He stated that no rent receipt was issued for December 2011 to January 2012 because rent was not paid for these months.

It is noted that during P.L.'s opportunity to make submissions, the Tenant constantly interrupted, and he was reminded that at the outset of the hearing, the parties were

asked to not interrupt or respond. When it was their turn, they would have an opportunity to address their concerns. After each interruption, the Tenant was reminded to be respectful and to wait for his turn. He would apologize for his behaviour, only to continue to repeat this behaviour despite being reminded not to. Eventually, the Tenant was cautioned that if he continued to act in the same combative manner, he would be muted and would not be permitted to participate until it was his opportunity to speak.

Due to the time constraints of the hearing, the complexity of the details of the claims, and the Tenant's continued interruptions that prolonged the proceeding, P.L. was unable to finish his submissions and would have an opportunity to do so at the adjourned hearing.

Before concluding the hearing, the Tenant was provided with an opportunity to voice the concerns that he had when he was constantly interrupting the proceeding. The points he was trying to convey were that the receipt he submitted as documentary evidence is different than the receipt the Landlord submitted, and it is his belief that the Landlord fraudulently altered the receipt.

Hearing # 2

As outlined in the Introduction, both parties called in late to the September 12, 2019 adjourned hearing. As this adjourned hearing was also scheduled for one hour, as there had been some discussion previously about resolution, and as there was a separate, concurrent Dispute Resolution proceeding between the parties regarding a notice to end the tenancy, the parties elected to spend the majority of this hearing time attempting to settle all the issues at once. However, a settlement was not reached, and this adjourned hearing was subsequently adjourned again.

Hearing # 3

Due to the complex nature of the Application and the outcome of another Dispute Resolution hearing that resulted in the Landlord being awarded an Order of Possession, the parties again attempted to settle the entirety of their disputes. However, as these settlement discussions were again not successful, the hearing proceeded where the Tenant was provided an opportunity to continue to explain the nature of his Application.

The Tenant reiterated that rent was paid in cash from the start of the tenancy, in the amount of \$1,150.00 per month, but the Landlord failed to provide receipts for this. From January 2012 to 2016, rent was increased to \$1,250.00 per month and he only received one receipt ever, as submitted in his evidence. He stated that his copy of this receipt is different from the one the Landlord submitted as evidence, and he pointed to the date appearing to be overwritten and the "Mr." appearing to be different. He submitted that everything between him and the Landlord was verbal prior to 2018 and that the Landlord collected \$1,750.00 per month for four months in 2016 when he was not permitted to. As well, the Landlord collected \$5,000.00 illegally in March 2016.

Regarding this \$5,000.00 payment, he stated that the Landlord advised him that rent was in arrears in the amount of \$10,000.00. As the Tenant did not have any receipts, he stated that he was in a "bad spot". As he wanted to "settle for ease", he paid the Landlord \$5,000.00. He acknowledged that he did not "look into" the past arrears that the Landlord alleged was due and he advised that there were particular "life circumstances that prevented" him from dealing with the question of whether or not rent was owed in the past. He questioned why the Landlord would have waited until 2018 to serve him a 10 Day Notice for Unpaid Rent if this rent was due from so long ago. He stated that rent was paid in the amount of \$1,350.00 per month from 2018 onwards.

P.L. cross-examined the Tenant and confirmed that the Tenant noted in his May 9, 2019 written submission that rent was paid from 2012 onwards by cash and cheque, but the Tenant testified in a previous hearing that he "insisted on paying rent by cheque" from 2012, which the Tenant confirmed stating. However, when P.L. brought up that the Tenant testified in a previous hearing that rent for 2012 to 2014 was paid by cash, the Tenant corrected himself by stating that it was paid by cheque. P.L. questioned the Tenant why there are no bank statements for these payments by cheque as there would be a paper trail. He stated that the Landlord has submitted his own accounting of the Tenant's rental payments, but in contrast the Tenant has not submitted any documentation to prove how or when he claims to have paid rent. He speculated that the Tenant actually wanted to pay rent in cash as there would be no traceable paper trail.

Throughout the hearings to date, the Tenant's demeanour had been consistently argumentative and he would repeatedly interrupt to talk over the participants; however, at this point, he became particularly combative and stated that he did not want to answer any of P.L.'s questions, nor did he need to provide testimony to refute these submissions.

P.L. continued to question the Tenant and he would either answer some questions vaguely, he would refuse to answer others, or he would often interject and yell over P.L. while he was speaking. The Tenant was reminded to be respectful during the hearing and that the hearing could not continue effectively if he would routinely act inappropriately. Furthermore, he was advised that if he would not provide a straightforward answer to P.L.'s questions, or if he did not want to answer at all, his answer would then be recorded as "refused to answer" and P.L. would be requested to move on to his next question. The Tenant was advised that his ongoing, belligerent behaviour was the primary reason why the previous hearings, and current one took so long to complete.

P.L. questioned the Tenant about his alleged cash payments of \$1,150.00 per month at the start of the tenancy, and where this money came from. The Tenant stated that he would sometimes withdraw this money from his business and pay the rent. If this were true, P.L. questioned why the Tenant did not provide any receipts from his business that would corroborate this testimony.

P.L. questioned the Tenant whether it was possible that the rent receipt, submitted by the Landlord that showed that rent from July 15, 2010 to December 15, 2011 was paid in the amount of \$1,250.00 each month, was given to him but was never submitted by the Tenant as evidence. The Tenant responded in the negative. P.L. then questioned whether this receipt was deliberately not submitted by the Tenant as it directly disproves the Tenant's claim that rent was \$1,150.00 per month for this period. The Tenant stated that he refused to answer this question but maintained that he never received this receipt.

P.L. questioned whether the Tenant had paid the rent in full each month and the Tenant concurred. P.L. referred to the Tenant's testimony with respect to the Landlord's sudden request for \$10,000.00 in 2016 and asked the Tenant why he would have not questioned the Landlord about this groundless request for a substantial amount of money if his rent had always been paid in full. Furthermore, if he had been paying rent by cheque prior to this, why would he not simply show the Landlord his cheque statements to prove that there was no rent outstanding.

P.L. made the point that the Tenant is clearly a strong individual and that he was aware of the *Act*, which the Tenant confirmed he had knowledge of then. P.L. then questioned why the Tenant would even pay the Landlord \$5,000.00 in spite of all of this, or why he would not dispute owing this amount through the Residential Tenancy Branch. He

speculated that the reason that the Tenant paid the amount of \$5,000.00 was because he was, in actuality, in arrears.

Furthermore, he questioned the Tenant's testimony that the Landlord would ask for rent to be paid in cash. Even if this were true and the Tenant made some payments in cash, he questioned why the Tenant would not have produced bank statements to the Landlord to show him that there was no money in arrears.

With respect to the payments of \$1,750.00 per month for the four months in 2016, P.L. questioned the Tenant whether these extra payments were to make up for previous rent arrears, but the Tenant stated that these were made because he had extra occupants living in the rental unit and the Landlord asked for more money. The Tenant stated that he knew of the requirements of the *Act* at this point in time and that he knew it was wrong for the Landlord to ask for this money, but he did not do anything about this as he was going through an "emotional period" in his life.

The Tenant was questioned again about why he would pay an additional \$5,000.00 without disputing this amount first, especially given that it was the Tenant's position that his rent was up to date. The Tenant stated that the \$10,000.00 was demanded "under duress", and due to "pressure from life" at the time, he simply paid the Landlord \$5,000.00 instead of disputing it.

P.L. questioned the Tenant about his payments of \$1,350.00 per month in 2017 and asked if the Landlord ever proposed a rent increase, but the Tenant stated that he could not recall. The Tenant stated that he paid this amount from the start of the year, that he never suggested a rent increase to this amount, but the Landlord had verbally promised him that rent would not increase. He stated that he never complained to the Landlord about paying \$1,350.00 per month.

Primarily due to the nature with which the Tenant was being evasive and confrontational, and subsequently delaying the process, P.L. was unable to finish making his submissions. Consequently, this hearing was adjourned again to be heard on February 27, 2020 as there was not enough time to adequately hear from the Landlord. The parties were afforded two hours and 14-minutes at this hearing to address the issues at hand.

Hearing # 4

This adjourned hearing was set down to be heard on February 27, 2020 at 11:00 AM and was scheduled with extra time. However, the Tenant advised that he had to leave by 12:00 PM to attend a funeral. The Landlord did not have any opposition to an adjournment so that the Tenant could attend to his personal matter.

The Tenant complained that he did not have an opportunity in prior hearings to present his case. The parties were reminded that Dispute Resolution proceedings were generally scheduled for one hour because that should be a sufficient amount of time for parties to make their submissions. To date, almost five hours had been allocated to these matters. Contrary to the Tenant's complaints that the hearing process was not fair to him, he was reminded that a significant amount of time had been afforded to him to make his claims with respect to an illegal rent increase and monetary compensation clear. However, he was unable to maintain focus on the issues at hand and would routinely bring up irrelevant issues.

Furthermore, when P.L. would have an opportunity to make submissions on behalf of the Landlord, these opportunities were prolonged by the evasive and/or combative manner with which the Tenant would answer questions or interrupt. Moreover, the reason for the adjournments was so that the Tenant would have been provided with an ample opportunity to clearly present his case. However, the delays were solely due to the Tenant's behaviour.

In order to make the best use of the remaining hearing time, and in an effort to keep the parties focussed, they were advised that each party would have one final hour each to make their submissions. The Landlord would have the remaining 20 minutes of this hearing to make submissions and would have only 40 minutes in the next adjourned hearing to finalize his submissions. Then, the Tenant would be provided with 60 minutes at that next adjourned hearing, after which time, that hearing would conclude, and I would make a final Decision.

P.L. advised that the Tenant mentioned in the previous hearing that the Landlord promised rent would not go over \$1,250.00 per month; however, the Tenant willingly paid \$1,350.00 per month in 2017 and never brought this up as an issue with the Landlord. P.L. reviewed the Landlord's accounting record of rental payments with the Tenant and the Tenant claimed that the Landlord's notation that over \$15,000.00 in arrears was not owed as it had been paid already.

P.L. questioned the Tenant if the irregular payment amounts documented indicated that he had been paying extra to make up for rental arrears, the Tenant stated that he “could not remember before 2016”, but then he reiterated that rent was not in arrears. The Tenant also stated that the Landlord’s notation of “No” beside certain months did not mean that rent was not paid but meant that rent had actually been paid in cash.

P.L. questioned the Tenant if the \$1,500.00 payment amounts documented were paid due to the Tenant’s allegation of extortion or if they were overpayments to compensate for past rent arrears, but the Tenant stated that he “cannot recall.”

P.L. summarized that the Landlord’s accounting demonstrates that the Tenant had missed frequent rent payments, and the irregular overpayments were an attempt to make up for past rent arrears. The Tenant contrarily stated that the rent overpayments were the Landlord’s attempts to implement an illegal rent increase.

Hearing # 5

The final, adjourned hearing was set down to be heard on June 11, 2020 at 9:30 AM and was scheduled for extra time as well.

As per the instructions that the parties were given at the previous hearing, P.L. was provided with the remaining 40 minutes of his time to make his final submissions. Once this 40-minute segment was complete, the Tenant was provided with his hour to make his final submissions. It should also be noted that the Tenant was afforded extra time by P.L. to continue to make submissions, and each party was then provided with additional, equal time to submit responses to each other’s final submissions. The parties were afforded a total of two hours and 32-minutes at this hearing to finalize the issues at hand.

P.L. had witness K.S. provide his testimony and he advised that he was responsible for renting the unit. He advertised the rental unit for \$1,400.00 per month, but he heard from his mother-in-law that the Landlord actually rented to the Tenant for \$1,250.00 per month. This upset him as it was considerably under market value. He stated that he prepared the rental receipts that were submitted as documentary evidence, that it is his handwriting on the receipts, with the exception of the signature, and that the information on the receipts was provided to him by the Landlord. He confirmed that there was a gap of one month in recorded payments on the receipts because of rent that was not paid, but then rent continued to be paid by cheque instead of cash.

P.L. had witness M.V. provide her testimony and she advised that the Tenant moved in July 2010 and that rent started at \$1,250 per month. She was upset with the Landlord for renting it for such a reduced amount.

The Landlord advised that the Tenant moved in July 2010, that rent started at \$1,250 per month, despite it being posted for \$1,400.00 per month, and that he rented it for this amount to help the Tenant as he was a friend. He stated that the Tenant would pay rent in cash but would pay in irregular portions and never in full. There was an argument over rent payments, so the Tenant was provided with receipts for cash payments. The Tenant only requested one receipt reflecting the total prior rent history and from that point forward, he agreed to pay rent by cheque. He confirmed that K.S. prepared the receipts but he signed them on the date that they were given to the Tenant.

He referred to the bank statements that he submitted as documentary evidence and stated that every rent cheque provided by the Tenant was deposited into this account. Furthermore, the rent ledger, that was submitted as evidence, was prepared from these bank statements and reflects when rent was paid, if it was paid, and how much was paid. He stated that "No" on the ledger meant that rent was not paid for that particular month, and any payment discrepancies over the amount of the rent due for the month were overpayments to make up for past rent arrears.

In 2016, as the Tenant was in significant rent arrears, he asked the Tenant for payment and the Tenant sold his car to come up with the \$5,000.00 installment. Even though the Tenant still owed \$5,300.00 more, the \$5,000.00 was all he had. Regarding the Tenant's four payments of \$1,750.00, the Landlord never told him to pay this, the Tenant simply paid this in an attempt to pay down the arrears. He stated that he never increased the rent, that the Tenant started paying \$1,350.00 per month from January 2017 onwards, and that the Tenant never brought this up as an issue.

P.L. submitted that the Tenant's evidence cannot be accepted as it is non-sensical, contradictory, and thus, not credible. He advised that the Tenant was antagonistic, that he refused or avoided answering questions, and that this demeanour is further indication that his evidence should not be accepted. He reiterated that the Tenant was "boldly proud" by claiming that he paid rent by cheques after 2012, but then contradicted himself by stating that he would pay by either cash or cheque. P.L. advised that in contrast, the Landlord and two witnesses provided what appeared to be honest, clear, straightforward testimony, and that rent was clearly \$1,250.00 per month from the start of the tenancy.

The Tenant's claim that the \$5,000.00 payment was made against his wishes and was extortion does not make sense as the Tenant does not appear to be a person who would capitulate if threatened by the Landlord. Furthermore, as the Tenant confirmed that he was aware of the *Act* at that time, it does not make sense that he would pay this amount unwillingly if he were threatened. Moreover, it also does not make sense that he would make four additional payments of \$1,750.00 for rent after already paying the \$5,000.00 payment if he believed this was wrong.

With respect to the payments of \$1,350.00 per month from 2017 onwards, when the Tenant was asked if the Landlord ever increased the rent, the Tenant stated that he "couldn't remember." It is P.L.'s position that the Tenant acquiesced to paying \$1,350.00 per month and that any claim of an illegal rent increase should be dismissed. Finally, he stated that the Tenant did not submit any records of rent payments at the time he made the Application, which suggests that he was not aware that the Landlord had proof of record of rent payments.

The Tenant then commenced his hour to provide his submission, and he cross-examined the Landlord. He had the Landlord confirm that the tenancy commenced in July 2010, that a written tenancy agreement was never drawn up because he did not know he was required by law to do so, that no security deposit was ever paid, and that rent was initially paid by cash and then cheques. The Tenant questioned who prepared the rent ledger submitted as documentary evidence, and the Landlord confirmed that he did. When the Tenant asked the Landlord when it was prepared, the Landlord "did not know" as he could not remember the exact dates this was done. The Tenant had the Landlord confirm that this ledger was never provided to him at any time during the tenancy.

It is the Tenant's position that the Landlord's ledger is inaccurate. He drew the Landlord's attention to a number of discrepancies in the ledger with respect to instances where rent was documented as being unpaid. However, he then referred to the Landlord's corresponding bank statements which indicated that rent had in fact been paid. He then asked the Landlord how he came up with the figures of rent payments in his rental ledger and the Landlord replied that the inconsistencies "could be my mistake." Again, the Tenant reiterated that these discrepancies demonstrate that the Landlord's accounting was incorrect.

The Tenant questioned the Landlord how the utilities were paid by the Tenant and the Landlord stated that the Tenant paid 95% of them by cash to the Landlord. However,

the Landlord acknowledged that he did not give any receipts to the Tenant for the utility payments.

The Tenant questioned the Landlord about how many other tenants lived on the property and the parties could not come to a consensus. However, the numbers ranged from two to six. The Tenant asked the Landlord how rent was paid by the other tenants and if there was another bank account where these payments would have been deposited and the Landlord advised that he refused to answer the questions. The Tenant suggested that the Landlord would have received an estimated 180 cash transactions for rent and utilities from these other tenants and these were not accounted for in the Landlord's bank statements. Ultimately, the Tenant's point here was that the Landlord accepted many cash payments, but he never issued any receipts.

The Tenant questioned the Landlord's ledger for non-payment of rents that were documented from October 2013 to December 2013 and he asked the Landlord if a 10 Day Notice for Unpaid Rent or a One Month Notice for Cause were ever issued for these instances of non-payment of rent. The Landlord stated that he did not serve any notices because he trusted the Tenant. The Tenant noted that the Landlord never served a 10 Day Notice for Unpaid Rent until 2018. The Tenant asked the Landlord how much rent was at the start of the tenancy and the Landlord replied that it was \$1,250.00 per month. The Tenant wondered how he could prove that this was true if the Landlord had failed to issue receipts for cash payments.

The Tenant again made submissions on the issue of the discrepancies he noted between the rent receipts that the Landlord submitted and the rent receipt that the Tenant submitted. He questioned the Landlord why two receipts would have been written on the same day if the rent amount of \$1,250.00 was the same. As well, he asked the Landlord if he had proof of when these receipts were given to the Tenant. The Landlord advised that these receipts were given right away; however, the Tenant suggested that the Landlord deliberately did not give them to him.

The Tenant questioned the Landlord about whether he served the Tenant with a Notice of Rent Increase form in 2017 and the Landlord indicated that he did not. He then asked the Landlord if a notice was given to the Tenant in 2016 when the \$5,000.00 payment was paid, and the Landlord responded in the negative.

It was at this point that the Tenant was advised that he was close to exhausting the hour that he was afforded to make his submissions and he again complained that he was not provided with enough time to cross-examine the parties. He was reminded that he was

advised multiple times that both him and the Landlord were provided with one final hour to make their submissions, and that the responsibility would be on him to make the most efficient use of his hour. The Tenant made his final points: that the Landlord did not comply with the *Act* because he did not formalize the tenancy in writing, because he did not issue receipts for cash payments, and because he implemented illegal rent increases from the original \$1,150.00 per month rent. As a result, he is seeking compensation in the amount of **\$18,800.00** for these illegal rent increases.

P.L. advised that if it assisted the Tenant, he was not opposed to allowing him extra time to finish cross-examining the other witnesses. The Tenant took this granted opportunity to then question K.S. when he prepared the receipts, and K.S. stated that the ads for the rental unit were posted in May or June of 2010 and the receipts were prepared in February 2012 in the amount of \$1,250.00 per month. The Tenant asked why two receipts were prepared and K.S. advised that it was because the Tenant requested them. The Tenant suggested that the wording of "Monthly Amount" on the Landlord's receipt submitted as documentary evidence was added at a later date.

Finally, the Tenant asked K.S. if the Tenant had ever demanded to pay rent by cheque because receipts were never issued, and K.S. stated that there was some agreement between the Landlord and the Tenant. Finally, the Tenant reiterated his position that the Landlord committed several, different breaches of the *Act* and he is owed compensation accordingly.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if he complies with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenant's rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenant a notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in

accordance with the regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenant in writing.

When reviewing and unravelling the claims in the Tenant's Application, the main issues that will be addressed are: how much was rent at the start of the tenancy, did the Landlord increase the rent contrary to the *Act*, and if so, should the Tenant be entitled to monetary compensation? In addition, I find it important to note that with respect to the Tenant's claims, Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

In addressing the issue about the amount of monthly rent at the start of the tenancy, when making an Application for Dispute Resolution, I find it important to reiterate that the burden lies on the Tenant to prove his claim. While it is clearly evident that the Landlord did not comply with Section 13 of the *Act* by preparing a written tenancy agreement with the Tenant, a key element to addressing this issue is the fourth part of the above test for assessing if a claim for damages is warranted.

When this test is applied, while the Tenant claims to have raised this issue with the Landlord, I do not find that there has been sufficient evidence submitted to support that the Tenant ever brought this to the Landlords attention as an issue after the tenancy commenced. It is apparent to me that the parties knew each other prior to the tenancy commencing and that the parties had an informal Landlord – Tenant relationship where little was documented, and most issues were dealt with verbally. Had the Tenant truly believed at the start of the tenancy that the Landlord was required to have the terms of the tenancy formalized in writing, I do not find that there is sufficient evidence to support

that he acted reasonably to minimize this breach. By doing so, the Tenant could have prevented potential problems that may have subsequently developed during the life of the tenancy.

In reviewing the totality of the evidence before me with respect to the Tenant's claim that rent was established at \$1,150.00 per month at the start of the tenancy then, I note that the Tenant has not submitted any documentary evidence to demonstrate that he paid this amount of rent each month for the first year of the tenancy. Even though he paid rent in cash, I find it reasonable to conclude that there would have been, at the very least, some paper trail of his withdrawals for these amounts from his financial institution.

While he stated in his written submissions that he did not have these statements prior to 2015, he noted that "a request can be made to my banks and once I receive, these can be submitted." As the Tenant had ample time prior to making this Application to gather the necessary documents required to support his claim, I find it curious why there was no urgency to acquire the very statements that could clearly support the crux of his position on this issue. In my mind, I find it reasonable to conclude that these statements would be fairly easy for a bank to reproduce if requested.

Furthermore, I find that these would be key documents that could potentially support and corroborate the Tenant's position that \$1,150.00 was withdrawn from his account each month. Given the importance of these documents to his claim, it is not clear why the Tenant did not obtain or submit them. I find that the lack of these crucial documents causes me to doubt the reliability of the Tenant's submissions. When weighing this insufficient evidence against the Landlord's evidence, and testimony from two other witnesses, I find that I prefer the Landlord's evidence on the whole. As a result, I find that the Tenant has failed to establish, on a balance of probabilities, that he paid \$1,150.00 per month at the start of the tenancy. I am satisfied that rent was, more likely than not, on a balance of probabilities, \$1,250.00 per month from the start of the tenancy.

With respect to the Tenant's claim that the Landlord raised the rent contrary to the provisions in the *Act*, I again find it necessary to apply the four-part test to assess the validity of this claim.

While the Tenant claims that the four payments of \$1,750.00 per month in 2016, and the rent paid of \$1,350.00 per month in 2017 were illegal rent increases, I do not find it reasonable that he acted reasonably to minimize this issue by only choosing to address

these alleged breaches almost ten years after the tenancy commenced. Furthermore, given that the Tenant acknowledged that he was aware that there was legislation governing residential tenancy matters in at least 2016, I find that this further supports a finding that, if the Tenant had indeed had opposition to any issues during the tenancy, that there were no attempts made by him to address them or to have them corrected.

When reviewing the conflicting testimony by both parties, and the totality of the evidence before me, as the Tenant was aware of the *Act* at the time he paid these extra amounts, it does not make sense to me why he did not oppose these payments, why he did not dispute this issue through the Residential Tenancy Branch, or why he even elected to pay the Landlord these amounts if it was his belief that the Landlord was requesting more rent than he was entitled to. Given the insufficient evidence presented by the Tenant, I am not persuaded of the Tenant's submissions that he was "forced" or "extorted" to pay more than the \$1,250.00 per month that was established at the start of the tenancy.

Further to this point is the Tenant's payment of \$5,000.00 to the Landlord. While the Tenant claimed that the Landlord asked him for \$10,000.00 and that he was put in a position that he felt "forced" to pay him \$5,000.00, I find it important to note that the Tenant submitted that at the time the Landlord asked him for the \$10,000.00, the Tenant claimed that there was never any rent arrears. If the Tenant had truly paid his rent up to the date of this Landlord's request, it does not accord with common sense or ordinary human experience that the Tenant would have given any credence to such a significant request for rent arrears.

Moreover, had the Tenant truly been up to date for rent payments, it does not make any sense that he would have willingly then paid \$5,000.00 to the Landlord, as there would have been absolutely no reason to part with such a large sum of money. Finally, given that the Tenant's position is that his rent was paid up to date by that point, I would expect that he would have submitted financial documentation to prove that his rent was paid consistently and on time.

While I acknowledge that there was some dispute over how rent was paid over the course of the tenancy, as the Tenant had claimed to make many payments by cheque after 2012, there should be a consistent number of bank statements available to, at the very least, depict a pattern of rent payments that would remotely support the Tenant's position that rent was never in arrears. When reviewing the financial statements that the Tenant submitted as documentary evidence, considering this tenancy spanned almost ten years, he has submitted a scant number of documents to sufficiently establish a

consistent pattern of rental payments. Rather, the few documents submitted appears, in my view, to be only specific documents that the Tenant has deemed could support his position, and that other documents have been omitted out of convenience because they belie the Tenant's position.

Based on the above, I do not find that it is logical or consistent with common sense, that any Tenant who had paid their rent up to date and was not in any arrears, would have willingly paid \$400.00 per month extra for four months, or paid a lump sum of \$5,000.00 to the Landlord when not legally required to do so. I also do not find it reasonable that a Tenant would not have challenged the Landlord about such large sums of money if this was brought up.

Given how implausible this scenario appears, given the Tenant's insufficient evidence to support this suggestion, and given that there was no opposition at the time these payments were made, I find it more likely than not that the Tenant had been in arrears for rent and that any payments over \$1,250.00 per month were attempts by the Tenant to pay the Landlord for past rental arrears that had been accruing. Therefore, I am not satisfied that these were illegal rent increases imposed by the Landlord.

Finally, with respect to the Tenant paying rent in the amount of \$1,350.00 per month from 2017 onwards, there is again insufficient evidence to support that the Tenant did anything to minimize this loss at the time if he believed there was a rent increase imposed contrary to the *Act*. Given my findings above, I find it important to reiterate that the Tenant has provided little evidence that has been compelling or persuasive enough to allow me to reasonably come to the conclusion that he was somehow forced to make payments of \$400.00 per month extra for four months, or a payment of a lump sum of \$5,000.00. As I am satisfied on a balance of probabilities, that the Tenant was more likely than not making these extra payments to pay down past rent arrears, I find it reasonable to conclude that the payments of \$1,350.00 per month were made in the same vein.

Moreover, even if I were to accept that rent was increased to \$1,350.00 per month from 2017 onwards, I find it important to note that the Tenant stated that he "couldn't remember" when he was asked if the Landlord implemented a rent increase. As well, there is no evidence that the Tenant ever opposed a rent increase at this time. When considering the basis of the Tenant's Application, I also find it important to note the legal principle of estoppel.

Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party's previous words, claims, or conduct. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, there is no evidence before me to indicate that the Tenant ever took any action during the tenancy to address any of his alleged concerns or to minimize any loss due to a breach of the *Act*, despite his knowledge of the requirements of the *Act* in 2016. As the Tenant failed to make any effort over the course of the tenancy to bring his alleged concerns to the Landlord's attention, I am satisfied that the Tenant, through his silence, provided implied consent that rent would be owed in the amount of \$1,350.00 per month starting in 2017. While part D of Policy Guideline #37 speaks to accepted rent increases by stating that "Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.", I note that this Policy Guideline was updated in December 2017. Prior to this date, a notice of rent increase form was not required, even if the Tenant had agreed in writing. As a result, I do not find it sufficient to accept that, even though he was aware that there was some recourse for tenancy related matters in 2016, that he could take no action at the time, but then reasonably expect to seek recourse over two years later.

When reviewing the totality of the evidence before me, as I am not satisfied that the Tenant has established that the Landlord increased the rent illegally, I do not find that the Tenant has made any overpayments of rent. Consequently, I do not find that the Tenant is owed any monetary compensation. Ultimately, as I am not satisfied that the Tenant has presented compelling evidence to support his claims, I dismiss his Application to dispute a rent increase and to request a Monetary Order for compensation in its entirety.

As the Tenant was not successful in his claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application to dispute a rent increase and to seek monetary compensation 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: July 8, 2020

Residential Tenancy Branch