



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- A return of the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they had received the materials. Based on the testimonies I find each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the security deposit for this tenancy?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in 2013 and ended May 31, 2018. The monthly rent at the end of the tenancy was \$870.00 payable on the first of each month. A security deposit of \$395.00 was paid at the start of the tenancy and is held by the landlord. The tenancy was renewed a number of times with the parties agreeing to and signing multiple fixed term tenancies.

There was a previous hearing under the file number on the first page of this decision on May 21, 2020. At the hearing the tenant first provided their forwarding address to the landlord.

A copy of the most recent tenancy agreement dated January 11, 2016 was submitted into evidence. The written tenancy agreement signed by the parties lists the amenities included in the rental payment.

The tenant seeks a monetary award in the amount of \$12,006.18 for the following items:

Item	Amount
Lack of Internet Services	\$3,761.18
Lack of PVR Services	\$480.00
Loss of Quiet Enjoyment	\$5,220.00
Invalid Rent Increases	\$2,150.00
Return of Deposit	\$395.00
TOTAL	\$12,006.18

The tenant says that while the internet and PVR services are not contained in the written tenancy agreement that it was available for a time during the tenancy and therefore should be considered an included amenity.

The tenant described the last several months of this tenancy as being fraught and stressful and giving rise to a claim for loss of quiet enjoyment. The tenant described the landlord's inspection of the rental unit as invasive and said that they suspected the landlord and their agent as being capable of falsifying evidence and invasion of privacy due to their occupation with the government.

The tenant says that the landlord unilaterally imposed rent increases above the amount allowed under the Act and regulations annually when they negotiated and entered into new tenancy agreements. The tenant now submits that over the course of the tenancy they overpaid the amount of \$2,150.00 due to these rent increases.

The landlord disputes the tenant's application in its entirety. The landlord submits that internet and PVR is not an amenity included in the written tenancy agreement, disputes that there was a loss of quiet enjoyment that would give rise to a monetary award and that the monthly rent was negotiated and agreed to by the parties.

Analysis

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities.

Section 39 of the *Act* provides that if a tenant does not provide a forwarding address in writing to the landlord within one year after the end of the tenancy the landlord may keep the security deposit and the tenant's right to a return of the deposit is extinguished.

In the present circumstance, as noted in the earlier decision of May 21, 2020 and confirmed by the parties at this hearing, the tenant did not provide a forwarding address to the landlord. I accept the evidence of the parties that this tenancy ended on May 31, 2018 and that the tenant did not provide a forwarding address until May 21, 2020, nearly 2 years after the tenancy had ended.

I therefore find that the tenant did not provide a forwarding address in writing to the landlord within one year of the end of the tenancy and has extinguished their right to a return of the deposit. The landlord is at liberty to keep the deposit as the tenant's right to a return has been extinguished.

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.

While the tenant submits that the provision of internet and PVR services was an implied term of the tenancy agreement I find little evidence in support of this view. The written tenancy agreement clearly indicates the services and facilities included in the rent. While the agreement indicates Cablevision is included, I do not find that this can be interpreted to include internet and PVR services. While I accept that the tenant had use

of some of the shared internet in the rental building at one point, the surrounding correspondence is clear that this was not an included service but rather a courtesy. I do not find the statements found in the online advertisement for the tenancy to be determinative. I find that it is mere puffery as would be found in many advertisements and is not intended to be a binding contract. The subsequent correspondence between the parties clearly shows that these services were the subject of negotiation and not yet agreed upon.

Based on the evidence I do not find that the internet and PVR services was an included amenity under the tenancy agreement and therefore find that the tenant has not demonstrated that there has been any loss due to a breach on the part of the landlord. I dismiss this portion of the tenant's application.

I do not find the tenant's submissions regarding the loss of quiet enjoyment to be convincing or to demonstrate that there is a basis for a monetary award. The tenant's evidence and testimony indicates that the tenant felt uncomfortable in the tenancy but I find there is insufficient evidence that this discomfort is anything more than the subjective feelings and reactions rather than a serious disturbance. I find that the list of complaints provided by the tenant to be more in the nature of subjective grumblings about minor issues. I do not find the tenant's misgivings about the landlord's entry into the rental unit to be reasonable under the circumstances. I find that both individually and cumulatively the tenant's complaints amount to nothing more than the disproportionate reaction to trivial matters and does not show that there has been a loss of quiet enjoyment that would give rise to a monetary award. Consequently, I dismiss this portion of the tenant's claim.

Based on the evidence of the parties I find that the agreement signed by the parties in January 2016 is a valid tenancy agreement. The tenant did not submit any of the previous tenancy agreements into evidence but says that there were earlier signed agreements where the rent was set at different amounts. The tenant characterizes the series of agreements as rent increases above that allowed under the Act and regulations. I do not find this interpretation to be supported in the evidence. I find that each new agreement entered by the parties is not an instance of a rental increase but the parties entering into a new agreement and setting a new monthly rent amount.

The tenant submits that they agreed to a new monthly rent amounts in 2014, 2015, 2016 and 2017. While the parties did not submit into evidence any of the earlier tenancy agreements, they described the process as new agreements being signed in

each instance. I find that the new agreements between the parties is not a case of the rent being unilaterally increased contrary to the *Act*.

There was no obligation on the tenant to enter the new fixed term tenancy with the landlord. The tenancy would simply have become a month-to-month tenancy if the parties were unable to decide to enter a new agreement. Based on the evidence I find that the tenant understood the terms of the agreement as presented on each occasion. I find that the tenant's characterization of the new agreements as unilateral increases imposed by the landlord to not be supported in the evidence. I find that the parties negotiated and entered into new agreements annually. I find that there has been no rent increase in contravention of the *Act* and dismiss this portion of the tenant's application.

As the tenant was unsuccessful in their application they are not entitled to recover the filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord is at liberty to retain the full deposit for this tenancy.

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 30, 2020

Residential Tenancy Branch