



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LRE, MNDCT, RP, OLC, FFT**

Introduction

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

- An order suspending or setting conditions on the landlord's right to enter the rental unit pursuant to section 70;
- A monetary award for damages and loss pursuant to section 67;
- An order for repairs to the rental unit pursuant to section 33;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; 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 they were in receipt of the respective materials. Based on the testimonies I find each party served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord's right to enter the rental unit be suspended or be subject to conditions?

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to make repairs to the rental unit?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover their 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 parties gave lengthy testimony on matters that are not relevant to the present application. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in August 2017 on a fixed-term basis and was renewed August 1, 2019 for a period ending July 31, 2020. The tenancy agreement provides that the monthly rent is \$6,800.00 payable on the first of each month and that the monthly rent will be discounted to \$6,200.00 if the tenant provides a lump sum pre-payment for the equivalent of 6 months.

The tenant submits that the actual amount of the rent is \$6,200.00, which they have been paying throughout the tenancy, and that any reversion to \$6,800.00 if they pay on a month-to-month basis is a rent increase. The landlord's position is that the base rent is \$6,800.00 and the \$6,200.00 amount is a discounted rate based on the tenant's ability to make lump sum pre-payments in 6-month installments.

A deposit of \$6,000.00 was collected at the start of the tenancy and is still held by the landlord. The tenant says that the full amount of \$6,000.00 was collected as a security deposit. The landlord now seeks a monetary award in the amount of \$3,000.00 as repayment of the overpaid deposit.

The landlord says that the \$6,000.00 deposit consists of a security deposit of \$3,000.00 and pet damage deposit of \$3,000.00. The written tenancy agreement of 2017 lists the security deposit as \$6,000.00 and subsequently provides that pet damage deposit is "included above ½ of above". The addendum to the tenancy agreement further provides that "the rental agreement is a receipt for one month rent \$6000.00 as a damage security deposit payable to Landlord". The subsequent renewal of the tenancy agreement also refers to the deposit as a damage security deposit of \$6,000.00.

The parties gave evidence that the tenant has made several complaints about the performance of the clothes dryer and that the landlord has inspected the machine. The landlord says that they have not detected any malfunction or performance issues. The tenant provides photographs of the areas of the rental unit they say need maintenance and repairs. The tenant says that the clothes dryer was purchased in 1999 and therefore requires replacement.

The tenant submits that they believe restrictions on the landlord's right to enter the rental unit are necessary as the landlord has indicated they intend to show the rental unit to prospective new occupants. The landlord testified that they have not entered the rental unit in breach of the *Act* and intend to provide proper notice to the tenant prior to entering as required under the *Act*.

The parties also made reference to the landlord's requests that the tenant do yard work and maintain the rental property in a presentable condition. The parties gave evidence about the condition of the rental property and their ongoing disagreements about the state of the property.

Analysis

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

I find that the tenant has provided insufficient evidence in support of the portion of the application seeking conditions be set on the landlord's right to enter the rental unit. The landlord testified that they have not entered the rental unit without proper notice and the tenant's documentary evidence consists of correspondence complaining about the landlord's ingress on a recent occasion. I find that there is insufficient evidence that the landlord has accessed the rental unit in breach of the *Act* such that an order restricting their right of access is necessary. I therefore dismiss this portion of the application noting parenthetically that the parties are well advised to review section 29 of the *Act* which outlines the landlord's right to enter the rental unit.

Based on the totality of the evidence I find that the \$6,000.00 paid at the start of the tenancy by the tenant to the landlord is a \$6,000.00 security deposit. I find that this deposit exceeds $\frac{1}{2}$ of the monthly rent in contravention of section 19(1) of the *Act*.

While the landlord characterized the deposit as being comprised of a \$3,000.00 security deposit and \$3,000.00 pet damage deposit I find that throughout the tenancy agreement and addendums the deposit is characterized as one lump sum payment and there is little reference to the deposit being comprised of a pet damage deposit. I find the single instance noting there was a pet damage deposit of $\frac{1}{2}$ the amount noted above to be vague and ambiguous. I find the references made throughout the remaining portion of the written agreements referencing the payment as a "damage security deposit" and treating it as a lump sum payment to be more in line with a single security deposit having been paid.

As the monthly rent provided in the tenancy agreement at the time the tenancy was entered is \$6,500.00, I find that the landlord was only able to accept ½ of the monthly rent, \$3,250.00 as the security deposit. In accordance with section 19(2) of the Act, I therefore find that the overpayment of \$2,750.00 is recoverable by the tenant. I issue a monetary award in that amount accordingly.

I find insufficient evidence in support of the portion of the tenant's application seeking an order for repairs. I find that the age of an appliance and a handful of photographs to be insufficient to determine that repairs are required to make the rental property suitable for occupation. I find the tenant's testimony and written submissions to consist of subjective complaints that are not reflected in the documentary evidence and refuted by the landlord. I find that the tenant has not established the need for repairs on a balance of probabilities and consequently dismiss this portion of the tenant's application.

I find that there is insufficient evidence to support the tenant's position that the landlord is imposing a rental increase in contravention of the Act. I find that the monthly rent for this tenancy is \$6,800.00 as clearly provided in the signed renewal agreement. I do not find the tenant's submission that the rent should be considered to be \$6,200.00 as that is the amount accepted previously to be persuasive or supported in the materials. The signed agreement provides that the monthly rent is subject to a discount based on a lump sum pre-payment. The fact that a conditional discount is offered in a tenancy agreement does not affect the amount of the monthly rent being \$6,800.00 nor does it affect the right of the landlord to expect payment of the full monthly rent amount if the conditions are not met. I find that this is not a rent increase as submitted by the tenant but simply the landlord requiring payment of the monthly rent in the amount provided in the tenancy agreement. As such, I find no violation of the Act, regulations or tenancy agreement that would give rise to an order for compliance.

As the tenant was not wholly successful in their application, I decline to issue an order to recover the filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,750.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The balance of the tenant's application 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 31, 2020

Residential Tenancy Branch