



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, DRI, LRE, FFT

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,214.72 pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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

At the outset of the hearing, the parties advised me that they are currently involved in another proceeding before the Residential Tenancy Branch (the "**RTB**") relating the rental unit: the tenant is disputing a notice to end the tenancy issued by the landlord (the "**Eviction Application**"). They advised me that the Eviction Application first came to a hearing on October 8, 2020 and was reconvened to a hearing on October 14, 2020. It was then reconvened to a third hearing which is to occur on October 21, 2020.

The parties agreed that the current application should not go forward until such time as the Eviction Application is decided. I am unsure when that will be (I do not know if the matter will be concluded at the October 21, 2020 hearing, or, if it is, when the presiding arbitrator will release his decision). This makes the adjourning of the current hearing difficult, as applications must be adjourned to a specific date. I am reluctant to re-schedule this application to another date, without knowing when the Eviction Application will be resolved.

However, in this hearing, the tenant submitted a monetary order worksheet on October 6, 2020, which purported to increase her monetary claim to \$33,554.22. The landlord sought to have this claim "withdrawn" as she has not had sufficient time to prepare her response to it.

RTB Rules of Procedure 4.3 and 4.6 do not permit a party to amend their application any later than 14 days prior to the hearing and require that such amendments are made “as soon as possible”. By increasing the amount of the monetary order sought, the tenant has, in effect, sought to amend her application. In doing so, she has failed to comply with the Rules of Procedure. The proper course of action is to disallow such an amendment and permit the tenant to make a further application for the amended monetary claim.

In the present case, as it will be necessary for the tenant to make a further application for the monetary order she seeks, and as I cannot say when the Eviction Application will be concluding (which makes adjourning this application difficult) I find it appropriate to dismiss the tenant’s application in its entirety, with leave to reapply once the parties have received a final decision in the Eviction Application.

At the hearing, I advised the tenant that, in acknowledgement of the fact that, but for the pending nature of the Eviction Application, the current application would have been adjourned and not dismissed, I would waive the filing fee for her application bringing these issues that were to be dealt with in this application.

However, upon reflection, I do not believe this is the correct course of action. As stated above, had this hearing gone ahead, I would have disallowed the increased monetary claim for failure to comply with the Rules of Procedure. As such, the tenant would be required to file an additional application to recover this amount and pay the filing fee for such an application.

As such, my dismissing this application rather than adjourning it would not cause the tenant to incur any additional filing fee. Had I adjourned this application she would still need to pay a filing fee for the application for the increased monetary claim. Now that I have dismissed it, the tenant can make a single application for the relief sought in this application, plus the increased monetary amount. Accordingly, the tenant is not prejudiced by the course of action I have set out above. I therefore decline to make any order regarding the necessity of the tenant to pay the filing fee for any subsequent application.

The tenant is, of course, free to apply for a fee waiver through the normal RTB process.

As stated above, I dismiss the tenant’s application in its entirety, with leave to reapply once the parties have received a final decision in the Eviction Application

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 16, 2020