Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On August 5, 2020, the Tenants made an Application for Dispute Resolution seeking a return of double the damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*") and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

Both Tenants attended the hearing, with M.G. attending as their advocate and K.M. attending as his supervisor. All parties in attendance, with the exception of K.M. provided a solemn affirmation.

M.G. advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on August 14, 2020. The Landlord acknowledged that he received this package. Based on this solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord received the Tenants' Notice of Hearing and evidence package.

The Landlord advised that he did not submit any evidence for consideration on this file.

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

- Are the Tenants entitled to a return of double the security deposit?

- Was a rent increase implemented contrary to the *Act*?
- If so, are the Tenants entitled to monetary compensation?

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.

All parties agreed that the tenancy started on January 1, 2015 and the tenancy ended when the Tenants gave up vacant possession of the rental unit on September 1, 2019. The Landlord was not sure how much rent was at the end of the tenancy, but he believed it to be $950.00 per month. The Tenants advised that rent was $1,000.00 per month at the end of the tenancy. Both parties agreed that a security deposit of $450.00 was paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Tenants advised that they provided their forwarding address in writing by sending a registered letter to the Landlord on December 9, 2019. The Landlord confirmed that he received this letter in December 2019, that he is still holding the deposit, and that he has never made an Application to keep the deposit.

To date, the Tenants have not received their deposit back. As the Landlord did not comply with Section 38 of the *Act* with respect to dealing with this deposit accordingly, they are seeking double the security deposit in the amount of **$900.00**.

M.G. requested to amend the Tenants' Application for monetary compensation up to **$1,250.00** because the Tenants were entitled to claim for the entire amount of the alleged illegal rent increase. He did not have any explanation for why this amendment was not made earlier pursuant to Rule 4.1 of the Rules of Procedure which requires that an Amendment to an Application for Dispute Resolution form be completed, that it be served to the Landlord as soon as possible, and that it be received by the Landlord not less than 14 days before the hearing, pursuant to Rule 4.6.

The Landlord advised that he understood this request to amend the Application.

As the Landlord understood the increased claim for compensation, I do not find that it would be prejudicial to the Landlord to also address this additional claim. As such, the hearing proceeded based on this increased request for compensation.

M.G. advised that the Tenants received a text on or around May 2017 from the Landlord informing them that rent would be increased by $50.00 per month and the new rent amount would be owed three months later. He submitted that informing the Tenants of a rent increase by text message does not comply with the requirements of the *Act*. Furthermore, the maximum allowable rent increase for 2017 would have been 3.7%. Based on the Tenants' rent of $900.00, the most their rent could have been increased was $33.30 per month. The Tenants are seeking compensation in the amount **$650.00**, which is calculated as $50.00 per month for the 13 months that they paid this increased rent amount.

He then advised that the Tenants received a second text message on or around August 2018 from the Landlord informing them of another rent increase. Rent would be increased by another $50.00 per month and the new rent amount would be owed three weeks later. Again, this form of notification of a rent increase was not in compliance with the *Act*, nor was the length of time for when the new amount was due. Moreover, the maximum allowable rent increase for 2018 was 4.0%, so the most the Landlord could have increased the rent based on the $950.00 rent was $38.00 per month. The Tenants are seeking compensation in the amount **$600.00**, which is calculated as $50.00 per month for the 12 months that they paid this increased rent until the end of the tenancy.

Tenant B.C. advised that when they received the Landlord's first text in 2017, they just paid this new amount after three months. Despite not knowing that the Landlord was required to use an approved form to increase the rent, she stated that she was aware that the Landlord must give three months' notice because she had been involved in a Residential Tenancy Branch dispute on an unrelated matter. She also acknowledged that she was aware that this initial $50.00 rent increase was too much, and she only confirmed this by consulting the Residential Tenancy Branch website six months after they started paying the increased rent. She testified that at the time, she was not willing to file for Dispute Resolution as she was working and dealing with her job. Furthermore, they never advised the Landlord verbally or in writing that the rent increase did not comply with the *Act*.

With respect to the second rent increase in 2018, she advised that she contacted the Residential Tenancy Branch on September 8, 2018 and she was informed of the requirements that the Landlord had to follow to increase the rent in accordance with the

Act. She also confirmed that the Information Officer informed her that she could apply for Dispute Resolution to have this issue corrected. However, she stated that she declined to pursue this route as she was involved in a previous Dispute Resolution hearing that did not go in her favour.

M.G. referred to Policy Guideline # 37 which indicates that the "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."

The Landlord advised that the Tenants are lying, and they did not check with the Residential Tenancy Branch regarding the requirements of rent increases. He stated that he rented to the Tenants for below market value and that these were not rent increases. He submitted that the Tenants advised him at some point that they could not pay rent for one month due to personal issues. As they were in arrears of $900.00, this increased amount of rent was to pay back the month that they were unable to pay. He could provide little, detailed testimony with respect to when this happened and there was insufficient evidence to support his claims. He confirmed that this text message he sent to the Tenants did not indicate that the new amount of rent of $950.00 was to make up for a previous rental shortfall. The Landlord provided vague answers about dates or details of what transpired during the tenancy, and it was clear that he managed this property in a disorganized, haphazard manner with little knowledge of the *Act*.

Regarding the second request for more rent, he was unsure of how he informed the Tenants that rent would be $1,000.00 per month. Apart from other submissions the Landlord made with respect to irrelevant issues, he continually stated that rent was "below market value." As well, he denied that this was a rent increase, but stated that it was compensation for "various issues" and for "mis-using the property". However, he was unable to explain what this meant or how it was relevant to the Tenants' claims of an illegal rent increase.

M.G. advised that the Landlord did not submit any evidence of the alleged rental arrears and neither party had any evidence of the text messages the Landlord sent regarding the increased rent.

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 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

When reviewing the submissions before me, the consistent and undisputed evidence is that the Tenants provided their forwarding address in writing to the Landlord on December 9, 2019 by registered mail and the Landlord acknowledged receiving this. Consequently, I am satisfied that the Landlord was served the Tenants' forwarding address in writing.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposit in full ***or*** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain the deposit without the Tenants' written consent.

As the Landlord had received the Tenants' forwarding address in writing, he had 15 days to either return the deposit in full or make an Application through the Residential Tenancy Branch to keep the deposit. However, the Landlord took no action at all and still holds the deposit.

Based on the totality of the evidence before me, as the Tenants did not provide written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep the deposit within 15 days of receiving the forwarding address in writing, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld the deposit contrary to the *Act*. Therefore, the doubling provisions of this Section do apply in this instance.

As a result, I am satisfied that the Tenants have substantiated a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenants a monetary award in the amount of **$900.00**.

With respect to the Tenants' claims for two illegal rent increases, 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 Tenants' 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 Tenants 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 Tenants in writing.

Moreover, Policy Guideline # 37 on the Residential Tenancy Branch website discusses rent increases in depth.

Furthermore, when establishing if monetary compensation is warranted, I find it important to note that 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."

In addition, Policy Guideline # 5 outlines a party's duty to minimize their loss and states that:

> A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.
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> In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
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> • remove and dry the possessions as soon as possible;
> • promptly report the damage and leak to the landlord and request repairs to avoid further damage;
> • file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

> Compensation will not be awarded for damage or loss that could have been reasonably avoided.

When reviewing the totality of the evidence before me, I find it important to note that the first rent increase occurred approximately three years ago, but the Tenants did not raise this issue with the Landlord or bring this to the Landlord's attention as an issue at any point, despite knowledge that at the very least the amount of rent was too much. Moreover, the Tenants knew that three months' notice was required to increase rent and they knew that the Residential Tenancy Branch was available to them if they had questions or concerns. Furthermore, the Tenants confirmed that they did not make any attempts to have this rectified through Dispute Resolution, despite knowledge that there were elements of the Landlord's request that did not comply with the *Act*, because they were too busy with a job.

With respect to their claims of a second illegal rent increase, I find it important to note that they contacted the Residential Tenancy Branch within weeks of being notified of the rent increase, and they were informed of all of the requirements of what the Landlord needed to comply with to increase the rent in accordance with the *Act*. Furthermore, the Information Officer with the Residential Tenancy Branch also informed them that they could have this matter rectified by applying for Dispute Resolution. However, they declined to do so as they stated that they were unsuccessful in a previous, unrelated tenancy matter. Despite their knowledge that the Landlord did not comply with the *Act* to increase the rent, the Tenants instead paid this increased amount of rent for the next year and they did not do anything else about it until they applied for Dispute Resolution almost a full year after the tenancy ended.

In assessing the Landlord's testimony, there is insufficient evidence to support his claims that the Tenants were in arrears for rent at any point during the tenancy. Given his rambling testimony about irrelevant issues, and his inability to answer any relevant questions with any compelling or persuasive details, it is clear in my view that the Landlord had little knowledge of his rights and/or responsibilities as a Landlord under the *Act*. As such, I am satisfied on a balance of probabilities that the Landlord more likely than not increased the rent twice, contrary to the requirements of the *Act*. However, there is still a responsibility on the Tenants to demonstrate that they have notified the Landlord that there has been a breach of the *Act* that needs to be corrected.

Given that the Tenants knew that the increase of rent to $950.00 might not have complied with the *Act*, the Tenants should have attempted to address their belief that this was an illegal rent increase with the Landlord in an attempt to mitigate any loss. Furthermore, there is no question that they were fully aware that the second rent

increase did not comply with the *Act*. However, they neglected to take any action whatsoever, despite this knowledge, and they simply paid the rent in full, as requested. Effectively, the only time the Tenants took any action against these illegal rent increases was when they applied for Dispute Resolution almost three years after the first illegal rent increase.

When considering the basis of the Tenants' 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 insufficient evidence before me to indicate that the Tenants ever took any action during the tenancy to address any of their alleged concerns or to minimize reasonably any loss due to a breach of the *Act*, despite their knowledge of some of the requirements of the *Act* in 2017. As the Tenants failed to make any effort over the course of the tenancy to bring their alleged concerns to the Landlord's attention, I am satisfied that the Tenants, through their silence and admitted inaction, provided implied consent that rent would be owed in the amount of $950.00 per month starting in 2017 and $1,000.00 per month starting in 2018.

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. As a result, I do not find it sufficient to accept that, even though they were aware that there was some recourse for tenancy related matters in 2017, that they could take no action at the time, but then reasonably expect to seek recourse for a matter that started approximately three years ago.

When reviewing the totality of the evidence before me, while I agree that the Landlord increased the rent contrary to the *Act*, I am satisfied that the Tenants waived their right to dispute this and they simply accepted this rent increase. Ultimately, as I am not

satisfied that the Tenants have presented compelling evidence to support their claims, I dismiss their Application to dispute a rent increase in its entirety.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of the security deposit	$900.00
TOTAL MONETARY AWARD	**$900.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$900.00** in the above terms, and 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 Tenants' Application to dispute a rent increase 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: November 29, 2020

Residential Tenancy Branch