



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 an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant GS attended for the tenants ("the tenant"). The advocate JD attended for the landlords who did not attend ("the landlord").

This hearing began on October 21, 2021 and was adjourned to this date/time to allow the landlord to file a letter of authorization appointing JD to act for them. This letter was submitted, and a copy provided to the tenant.

The date for the continuation of the hearing was approved by the advocate JD who informed the Arbitrator that the landlord LW would attend. However, at the continuation, JD stated that neither landlord was available to attend; the male landlord was unable to leave work and the female landlord submitted a medical letter of explanation.

Preliminary are addressed:

1. *Recording*

At the beginning of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

2. *Email*

Each party confirmed the email address to which the Decision and any Order will be sent.

3. *Service upon Parties*

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenant served the landlord as required under the Act.

The tenant acknowledged receipt of the landlord's materials. Some of the evidence related to unconnected issues, such as a potential claim by the landlord for damages to the unit allegedly done by the tenant.

Rule 7.17 of the Rules of Procedure state as follows:

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence.

In accordance with rule 7.17, I exercised my authority to determine the relevance, necessity, and appropriateness the landlord's evidence. I will refer to only admissible, relevant, necessary, and appropriate evidence in my Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as requested?

Background and Evidence

The parties submitted a copy of the tenancy agreement. They agreed as follows:

1. The landlord and tenant entered into a one-year fixed term tenancy agreement beginning March 14, 2018 for rent of \$2,300.00 payable at the beginning of each month.
2. The agreement provided that the tenant must vacate the unit at the end of the term for the landlord's use.
3. At the expiry of the term, the parties agreed to a monthly rent increase of \$300.00 effective March 14, 2019. The discussions and agreement took place through text exchange, copies of which were submitted.
4. The tenant paid \$2,600.00 monthly for 18.5 months until vacating on October 24, 2020. The additional rent for this period (from the end of the fixed term until the tenant moved out) was \$5,500.00 for which the tenant claimed reimbursement.
5. The landlord did not issue a Notice of Rent Increase or comply with the provisions of the Act regarding procedure for increases in rent. An increase of rent of \$300.00 monthly exceeded allowable restrictions on rental increases in effect at the time.
6. The tenant paid a security deposit of \$1,100.00 to the landlord at the beginning of the tenancy. The landlord received a written notice of the tenant's forwarding address at the end of the tenancy. The landlord has not applied to keep the security deposit. The tenant has not authorized the landlord to retain the security deposit. The tenant claimed a doubling of the security deposit.

The landlord acknowledged intention at the time the lease was entered into to sell the unit at the end of the term and not to occupy it.

The landlord claimed the tenant proposed the amount of the rental increase and therefore the increase is not in violation of the Act. The tenant responded they were unaware the increase was in violation of the amount allowed under the Act until the tenancy had ended and they contacted the RTB about the return of the security deposit.

The landlord also claimed that the parties agreed upon the rent increase through an exchange of texts which constituted a new tenancy agreement and a written agreement thereby eliminating the requirement to comply with the Act for rent increases. The tenant responded that the exchange of texts was based on his uninformed and faulty assumption about allowable increases and the law with which the landlord must comply. The tenant testified he believed the family would be evicted if they did not satisfy the landlord's request for more money.

The landlord acknowledged receipt of the tenant's forwarding address but stated they did not return the deposit because of damages to the unit for which a claim was intended. The landlord acknowledged no such claim has been initiated.

The parties conducted a condition inspection at the beginning of the tenancy, and both signed the report, a copy of which was submitted.

The agent of the landlord and the tenant conducted a condition inspection at the end of the tenancy. The report was only signed by the tenant who agreed in writing to pay for damages in an unspecified amount; however, no amount was agreed upon in the report for deduction from the security deposit. The tenant did not know how much the landlord claimed until the landlord responded to the tenant's Application for Dispute Resolution. The tenant's several requests for the return of the security deposit were not answered.

The tenant requested a doubling of the security deposit, a monetary award of \$5,500.00, and reimbursement of the filing fee as follows:

ITEM	AMOUNT
Security deposit reimbursement	\$1,100.00
Security deposit doubling	\$1,100.00
Rent overpayment	\$5,500.00
Reimbursement of filing fee	\$100.00
TOTAL CLAIM TENANT - DAMAGES	\$7,800.00

The landlord requested the tenant's claim be dismissed without leave to reapply.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

In assessing the tenant's claims, I gave considerable weight to the tenant's testimony. The tenant was well prepared and organized for the hearing. The tenant presented a written timeline of events of several pages which was supported in all aspects by documentary evidence. Their presentation was thorough and convincing. In contrast, I found the landlord's evidence was not an accurate picture of what took place. I do not give the landlord's testimony much weight.

For the following reasons, I find the tenant has met the burden of proof on a balance of probabilities with respect to their claims. I find the landlord has failed to comply with the provisions of the Act with respect to the rent increase and return of the security deposit. I find the rent increase unlawful, and I set it aside. I grant the tenant a Monetary Order in the amount claimed.

Rent Increase

The Act addresses the requirements and conditions for rent increases in sections 42 and 43. The portions of these sections relevant to the tenants' application state:

Timing and notice of rent increases

42(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

Amount of rent increase

43(1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

[...]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The landlord claimed that the rent increase in March 2019, one year after the tenant moved in, was an agreed upon amount (firstly suggested by the tenant) for the new monthly tenancy which came into effect when the initial term ended. The landlord acknowledged that the parties did not sign a second agreement.

The approved form of Notice of Rent Increase (Form RTB-7) provides significant information to tenants regarding their rights under the Act. This information includes:

- A landlord must give a tenant at least 3 whole months' notice, in writing, of a rent increase. For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1st, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1st. The landlord must use this form, Notice of Rent Increase, and must serve according to the Residential Tenancy Act.*
 - It is an offence for a landlord or a landlord's agent to collect a rent increase in any other way other than in accordance with Part 3 of the Residential Tenancy Act.*
- [...]*

- *A tenant may not apply for dispute resolution to dispute a rent increase that complies with Part 3 of the RTA.*
- *A landlord may only impose a rent increase up to the amount calculated in accordance with the regulations or as ordered by an arbitrator. If a tenant believes that the rent increase is more than allowed by the regulations, the tenant may contact the Residential Tenancy Branch for assistance*
- *For further information on rent increases, see Part 3 of the Residential Tenancy Act and Part 4 of the Residential Tenancy Regulation. You may also call the recorded 24-hour information line or visit the B.C. Government Web site to find out how to contact a Residential Tenancy Branch or to get more information (this information is at the bottom of page 1)*

By requiring that the Notice of Rent Increase form be delivered to tenants, the tenants are provided with the above-stated information at the same time they are provided with notice of the rent increase. This information is designed to inform tenants of their rights under the Act and provide them with the information necessary to dispute the rent increase. The tenants did not have this information.

Policy Guideline 37 contemplates sections 42 and 43 (above) and states in part (emphasis added):

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator.

*If the tenant agrees to an additional rent increase, that **agreement must be in writing.***

*The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and **the tenant's signed agreement** to that increase.*

In this case, I find that the tenant did not have this information at the time they were made aware of the landlord's intention to raise the rent. As such, I find they were disadvantaged when they agreed to the rent increase. I find the tenant did not know their rights under the Act.

I find that the landlord did not provide the tenant with written notice of the rent increase three months prior to the rent increase taking effect, or at all. I find that the landlord proposed a rent increase to the tenant and encouraged the tenant to suggest the amount. I find the tenant proposed an increase and paid the new amount believing they had no choice, or they would be evicted. I find that the exchange of texts between the parties does not comply with the requirement that ***the agreement be in writing and signed*** by the tenant.

I find there was only ever one tenancy which continued monthly after the expiry of the fixed term. I find, as acknowledged by the landlord, that the landlord never intended to use the unit at the end of the fixed term but intended to sell.

I find that payment of the rent increase by the tenant for the remainder of the tenancy in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

I find the tenant has incurred a loss in overpayment of rent. I accept the tenant's calculation of the amount of the rent paid, which was not in dispute.

I find that there is little in the way of minimization of loss the tenant could have done. They were not made aware of their rights under the Act, as required, so it is not

reasonable to expect them to have contested the rent increase earlier than they did (as one purpose of the Notice is to advise the tenants of these rights).

As such, I find that that the tenants are entitled to recover the full amount of their overpayment which I find is **\$5,500.00**. I grant the tenant a Monetary Order in this amount.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award pursuant to section 38(6)(b) of the *Act* equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a). I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*.

As acknowledged by the landlord, I find that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

The landlord acknowledged the tenant provided written notice of their forwarding address on the move out day. The landlord acknowledged they did not return the security deposit or apply to keep the security deposit within 15 days as required.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenant is entitled to a monetary order of **doubling of the security deposit**.

Filing Fee

As the tenant is successful in the application, I award the tenant reimbursement of the filing fee under section 72.

Summary

In conclusion, I award the tenant a Monetary Order of \$7,800.00 calculated as follows:

ITEM	AMOUNT
Security deposit	\$1,100.00
Security deposit doubling	\$1,100.00
Rent overpayment	\$5,500.00
Filing fee reimbursement	\$100.00
TOTAL MONETARY ORDER	\$7,800.00

Conclusion

I award the tenant a Monetary Order of **\$7,800.00**. This Order must be served on the landlord. This Order may be filed and enforced as an Order of the Courts of the Province of BC.

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 29, 2021

Residential Tenancy Branch