



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with two Tenant Applications for Dispute Resolution claiming monetary compensation against the landlords that were joined together.

Both the landlords and the tenants appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. The hearing process was explained to the parties and all parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Service of hearing materials

I confirmed that each tenant served each landlord with their respective Application for Dispute Resolution and evidence and the landlords received the tenant's hearing materials.

I confirmed the landlords did not serve any documentary evidence upon the tenants and they intended to provide their position orally during the hearing.

2. Joining of Application for Dispute Resolution

I reviewed the nature of the dispute and the rented premises with the parties to determine whether it was appropriate that the applications be joined together.

Rule 2.10 of the Rules of Procedure provides for joining of applications, as follows:

2.10 Joining applications

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

I confirmed that the tenants rented different bedroom rooms at the same residential property from the same landlords; that the disputes concerned increases to the monthly rent payable; and, the same or similar fact patterns were present. There was no objection from any of the parties to have these disputes joined and heard together. As such, the applications remained joined together. This decision applies to both applications but separate Monetary Orders will be issued to the tenants, if applicable.

3. Amending landlord's name

I noted that the last name for one of the landlords was different on the applications before me. I determined that one of the tenants had made a typographical error in recording the landlord's last name. The tenant's application was amended to reflect the landlord's correct last name, without objection of either party.

Issue(s) to be Decided

1. Did the tenants pay an unlawful rent increase? If so, what is the amount the tenants are entitled to recover?
2. Award of the filing fee.

Background and Evidence

Each of the tenants rented a bedroom from the landlords on the main floor of the subject property under separate tenancy agreements. There were five bedrooms on the main floor that were rented out to different tenants, plus a basement suite at the property. The landlords did not reside at the subject property.

Below, I have summarized the tenant's terms of tenancy using their initials to differentiate the two different tenants that are the subject of this decision.

Tenant SS

SS's tenancy started on October 1, 2016 for a fixed term set to expire on April 30, 2017. SS paid a security deposit of \$270.00 and the rent was set at \$540.00 payable on the first day of every month. Rent included internet service. The tenancy agreement provides that at the expiry of the fixed term the tenancy would end and the tenant would be required to vacate the rental unit.

On April 19, 2017 the landlord prepared and both parties signed a written statement that provides as follows: "Both parties agree to extend the lease from May 1, 2017 to April 30, 2018. Rent raise up to CAD \$580." The tenant testified that she paid rent of \$580.00 for May 2017 but the internet was terminated in May 2017 and the landlord refunded \$30.00 to the tenant.

On June 30, 2017 the landlord prepared and both parties signed a written statement that provides as follows: "Rent change from CAD 580 to CAD 550 (June 1, 2017 – April 30, 2018) Damage deposit: \$275.00." The tenant stated the rent was reduced to \$550.00 to reflect the termination of internet that had previously been included in rent. The tenant testified that she paid \$550.00 during this term and she made a payment to increase the security deposit to \$275.00.

On April 2, 2018 the landlord prepared and both parties signed a written statement providing that they agree to "extend the lease" from May 1, 2018 to April 30, 2019 and the following "amendment":

1. The rent is \$580.00
2. The damage deposit is \$290.00
3. The tenant will move out before the end of the lease.

The tenant testified that she made rent payments of \$580.00 for the above described term and she made a payment to increase the security deposit to \$290.00.

On March 2, 2019 the landlord prepared and both parties signed a written statement providing that they agree to "extend the lease" from May 1, 2019 to April 30, 2020 and the following "amendment":

1. The rent is \$590.00
2. The damage deposit is \$295.00
3. The tenant will move out before the end of the lease.

The tenant testified that she made rent payments of \$590.00 for the above described term and she made a payment to increase the security deposit to \$295.00.

On March 18, 2020 the landlord prepared and both parties signed a written statement providing that they agree to "extend the lease" from May 1, 2020 to April 30, 2021 and the following "amendment":

1. The rent is \$600.00
2. The damage deposit is \$300.00
3. The tenant will move out before the end of the lease.

The tenant testified that she made rent payments of \$600.00 from May 1, 2010 through to January 31, 2021 when the tenancy ended and the tenant made a payment to increase the security deposit to \$300.00.

The landlords did not dispute or refute any of the above described facts, dates or amounts and acknowledged they were correct.

Tenant KG

KG's tenancy started on September 1, 2017 for a fixed term set to expire April 30, 2018. KG paid a security deposit of \$265.00 and was required to pay rent of \$530.00. Rent of \$530.00 did not include internet service. The tenant testified that he paid rent of \$530.00 for this term and paid the security deposit of \$265.00

On March 27, 2018 the landlord prepared and both parties signed a written statement providing that they agree to "extend the lease" from May 1, 2018 to April 30, 2019 and the following "amendment":

1. The rent is \$560.00
2. The damage deposit is \$280.00

3. The tenant will move out before the end of the lease.

The tenant testified that he made rent payments of \$560.00 for the above described term and he made a payment to increase the security deposit to \$280.00.

On February 23, 2019 the landlord prepared and both parties signed a written statement providing that they agree to "extend the lease" from May 1, 2019 to April 30, 2020 and the following "amendment":

1. The rent is \$570.00
2. The damage deposit is \$285.00
3. The tenant will move out before the end of the lease.

The tenant testified that he made rent payments of \$570.00 for the above described term and he made a payment to increase the security deposit to \$285.00.

The landlords did not dispute or refute any of the above described facts, dates or amounts and acknowledged they were correct.

Tenants' position

The tenants are of the position that the landlords unlawfully increased the rent as the landlords did not serve them with a Notice of Rent Increase. As such, the tenants are of the position the rent should have remained at its original amounts and they are entitled to recovery of the amounts they paid in excess of the rent stipulated in the original tenancy agreements. In SS's case, SS submits that in determining the overpaid rent, the original rent of \$540.00 should be reduced by \$30.00 to reflect the termination of the internet.

The tenants provided worksheets outlining the amounts they paid in excess of the rent amounts provided under their respective original tenancy agreements. SS calculated that she is entitled to recovery of \$3000.00 and KG calculated that he is entitled to recovery of \$840.00.

Upon review of the worksheets during the hearing, I noted that SS appears to have miscalculated the recovery and failed to correctly count the number of months between May 2020 and January 2021. SS confirmed she made an error in her calculation. During the hearing, I informed the parties that I would review the calculations further in deliberating this decision and that if the tenants are entitled to recovery they would be

awarded the actual correct amount, or the amount claimed, which is lesser. The tenants did not object to this approach and indicated it was fair.

As for the increase in security deposits held by the landlords, the tenants indicated the security deposits were disposed of to their satisfaction at the end of their respective tenancies. As such, there is not claim for return of any portion of the security deposit.

Landlord's position

The landlord's submitted that the original tenancy agreements provide a vacate clause requiring the tenancy to end and the tenants to vacate the rental unit upon expiry of the fixed terms and the agreements the parties subsequently reached constitute new tenancy agreements, not extensions of the original leases. The landlords submitted that the subsequent leases also contained vacate clauses. The landlords argued that where parties enter into a new tenancy agreement, the parties are at liberty to re-negotiate the terms of tenancy, including the rental amount, and a Notice of Rent Increase is not required.

The landlords acknowledged that the internet had originally been included in SS's original tenancy agreement and rental amount of \$540.00 but the internet service was terminated due to a copyright infringement. Although the landlords did not serve SS with a *Notice Terminating or Restricting a Service or Facility*, the landlords did provide SS with a rent reduction of \$30.00 per month to reflect the termination of a service in the month it was terminated (May 2017).

Analysis

Section 13 of the Act requires that a tenancy agreement with a fixed term must specify whether the tenancy is to continue at the end of the fixed term or whether it will end and the tenant must vacate.

Based on emails SS provided as evidence, in late March 2017 and early April 2017, the landlord contacted the tenant in an effort to determine if SS intended to renew the tenancy agreement for a new rental amount or move out. The landlords indicates they would advertise the rental unit and seek a replacement tenant if SS did not renew for the new rental amount. SS ultimately agreed to renew the tenancy for the new rental amount starting May 1, 2017. KG started his fixed term tenancy on September 1, 2017. As such, both SS and KG were in fixed term tenancy agreements when the Act was amended effective December 11, 2017.

Effective December 11, 2017, the Act was amended to provide protection for tenants faced with vacate clauses. The amendments provided that a tenant would not have to vacate a rental unit, even if their tenancy agreement provided such, unless the tenancy was a sublease agreement or the landlord or landlord's close family member would be occupying the rental unit at the end of the fixed term. Further, even if a tenancy agreement was already in effect on December 11, 2017, such as the case for SS and KG, transitional provisions provided that the changes made on December 11, 2017 applied retrospectively.

In the cases before me, there was no suggestion that the parties entered into a fixed term with a vacate clause because the tenancy was a sublease or that the landlord or landlord's close family member intended to occupy the rental units upon expiry of the fixed term.

In light of the above, I find the vacate clauses provided in the agreements entered into in 2017 were no longer enforceable after the Act was amended on December 11, 2017 and the tenants were not required to vacate the rental unit at the end of their fixed terms.

Despite the protection provided by way of the above described amendment to the Act, the parties did execute documents indicating their agreement to "extend the lease" for another one year period, each year, until the end of the tenancies. I proceed to consider whether these agreements constitute extensions of the tenancy agreements that would require a Notice of Rent Increase to increase the rental amount, as argued by the tenants; or, new tenancy agreements that do not require a Notice of Rent Increase, as argued by the landlords.

Upon review of the agreements executed by the parties subsequent to the original tenancy agreements, I find they are extensions of the fixed terms and not new tenancy agreements. I make this determination upon considering the following factors:

- The documents executed by the parties expressly statement their purpose is to "extend" the lease.
- The definition of "extend" is "to cause to cover a larger area; make longer or wider" [my emphasis underlined]
- The agreements do not state they are new tenancy agreements in place of the prior tenancy agreements.

- The extension agreements in themselves are non-compliant with tenancy agreement requirements provided by section 13 of the Act; and,
- The extensions rely upon the content of original tenancy agreements for all other terms except the term, the amount of the rent and the amount of the security deposit.

Considering the above, I reject the landlord's argument that new tenancy agreements formed between the parties. Rather, I find the original tenancy agreements continued for longer periods of time due to the extensions. Accordingly, in order to increase the monthly rent, the landlords were required to comply with the rent increase provisions of the Act.

Rent increases are provided in sections 40 through 43 of the Act and sections 22 and 23 of the Residential Tenancy Regulation. The amount of a rent increase is limited to the amount provided under the Regulations unless the landlord has the tenant's written consent or authorization of the Director to increase the rent by a greater amount. Whether the landlord increases the rent by an amount equal to or less than the amount permitted by the Regulations, or obtains the tenant's written consent for a greater increase, the landlord must issue the tenant a Notice of Rent Increase, in the approved form, at least three full months before the rent increase is to take effect.

While it may be argued the tenants consented to a rent increase greater than the amount permitted by the Regulations by signing the lease extensions, it remains that the landlords did not serve the tenants with Notices of Rent Increase. In the absence of Notices of Rent Increase, I find the rental amounts were not legally increased and that the monthly rent the landlords were entitled to collect remained at the amounts stipulated in the original tenancy agreements, except in SS's case, the rental amount was required a rent reduction for loss of the internet service starting in May 2017.

Where a tenant overpays rent, section 43 of the Act provides that the tenant is entitled recover the overpayments from the landlord.

SS's award

There is no overpaid rent in the first year of tenancy. The overpaid rent starts in year 2, as set out below:

The original monthly rent was set at \$540.00. Starting in May 2017, the landlord reduced the monthly rent payable by \$30.00 to reflect termination of the internet service

provided by the landlord. As such, I find the monthly rent for May 2017 onwards should have been \$510.00 (\$540.00 less \$30.00) and overpayments are based on the monthly obligation of \$510.00.

Term	Monthly rent Paid	Monthly rent Payable	Monthly Overpayment	Term Overpayment
May 2017 to April 2018	\$550	\$510	\$40	\$480
May 2018 to April 2019	\$580	\$510	\$70	\$840
May 2019 to April 2020	\$590	\$510	\$80	\$960
May 2020 to Jan 2021	\$600	\$510	\$90	<u>\$810</u>
			TOTAL	\$3,090

I conclude SS overpaid rent by \$3090.00 from May 2017 through January 2021; however, I limit her award to the amount claimed, the lesser amount of \$3000.00. Therefore, I award SS \$3000.00 for overpaid rent, as claimed.

I further award SS recovery of the \$100.00 filing fee she paid for her application for a Monetary Order in the sum of \$3100.00.

KG's award

There is no overpaid rent in the first year. There was no adjustment to rent payable for KG for termination of internet as the termination of the internet occurred before his tenancy started and his monthly rent did not include internet. Overpaid rent starts in year 2, as set out below:

Term	Monthly rent Paid	Monthly rent payable	Monthly Overpayment	Term Overpayment
May 2018 to April 2019	\$560	\$530	\$30	\$360
May 2019 to April 2020	\$570	\$530	\$40	<u>\$480</u>
			TOTAL	\$840

I conclude KG overpaid rent by \$840.00 from May 2018 through April 2020 and he is entitled to recover that amount from the landlords. I further award KG recovery of the \$100.00 filing fee he paid for his application for a Monetary Order in the sum of \$940.00.

Conclusion

The tenants are entitled to recovery of overpaid rent from the landlords and recovery of the filing fee they paid. I provide tenant SS a Monetary Order in the sum of \$3100.00 and tenant KG a Monetary Order in the sum of \$940.00.

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 17, 2021

Residential Tenancy Branch