



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, OLC, MNDCT, DRI

### Introduction

This hearing dealt with the tenant's application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- a determination about a rent increase above the regulations pursuant to section 43.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or

accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issue – Tenants Evidence

At the outset of the hearing the tenant advised that he did not serve any of his documentary evidence to the landlord but only uploaded to the Branch website. The landlord confirmed that they did not receive any documentation from the tenant. As the tenant did not serve the landlord any documentation, I have not considered it in making a decision. The tenant was given a full opportunity to provide testimony which was considered. This was explained to both parties and each confirmed that they understood. The hearing proceeded and completed on that basis.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order as compensation?

Is the tenant entitled to an order to compel the landlord to comply with the Act, regulation, or tenancy agreement?

Is a determination required for a rent increase above the regulations?

Is the tenant entitled to the recovery of the filing fee?

### Background and Evidence

Both parties agreed to the following. The tenancy began on January 1, 2016 and that the current monthly rent is \$2182.25. Both parties also confirmed that the parties have agreed to and signed a new contract each year.

The tenant gave the following testimony. The tenant testified that the rent went from \$1775.00 in January 2017 up to \$2100.00 in January 2018. The tenant testified that this was above the regulations and was not provided any notice of the increase. The tenant testified that he has overpaid \$7500.00 in rent. The tenant seeks to recover this amount as well as the \$100.00 filing fee.

The landlords gave the following testimony. HL testified that the parties negotiated a new contract in December 2017. HL testified that the parties agreed to and signed that the new rate would be \$2100.00. JL testified that there has never been a dispute or complaint about each contract and is surprised the tenant filed an application. HL

testified that the tenant's application should be dismissed as he has agreed to each and every contract and was not forced to sign it.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

### Overpayment of Rent

In the tenant's own testimony, he confirmed that he was given a new tenancy agreement with a new negotiated price each year, which he accepted. The tenant knowingly and willingly accepted the terms of each new agreement, accordingly; I find that the tenant has not provided sufficient evidence to prove his claim of overpayment and I therefore dismiss this portion of his application.

### Dispute Rent Increase and Order for Landlord to Comply

The tenant did not provide sufficient evidence to show that "an illegal rent increase" was given as alleged by the tenant or a necessity to make an order to have the landlord comply with the *Act*, regulation, or tenancy agreement. Based on the above, I hereby dismiss this portion of the tenant's application.

As the tenant has not been successful in this application, the request to recover the filing fee is dismissed.

### Conclusion

The tenant's application is dismissed in its entirety 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: January 31, 2022

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Residential Tenancy Branch