Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenant filed an amendment on September 9, 2021 updating the tenant's address for service and increasing the monetary claim for damage or compensation from $2,161.29 to $2,436.36.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 2:06 p.m. in order to enable the landlords to call into this teleconference hearing scheduled for 1:30 p.m. The tenant and the tenant's advocate (the "advocate") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, the advocate and I were the only ones who had called into this teleconference.

The tenant and the advocate confirmed their email addresses for service of this decision and order.

The advocate submitted that the tenant's application for dispute resolution, evidence and amendment were sent to each landlord via registered mail on July 15, 2021. A registered mail receipt stating same was entered into evidence. A delivery confirmation stating the above packages were received on July 19, 2021 was also entered into evidence. I find that the above packages were served on the landlords in accordance with sections 88 and 89 of the *Act.* I find on a balance of probabilities, that the above packages were received by the landlords on July 19, 2021 as evidenced by the delivery confirmations entered into evidence.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

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

The tenant provided the following undisputed testimony. This tenancy began on August 1, 2013 and has ended. A security deposit of $350.00 was paid by the tenant to the landlord. Rent was due on the first day of each month.

The advocate submitted that the landlords verbally informed the tenant that rent was increasing from $800.00 per month to $900.00 per month effective March 1, 2020 and that if the tenant didn't like it, she could move. The advocate submitted that at this time the tenant was afraid to move out in a pandemic and did not know her rights regarding when and how rent can be increased by a landlord.

The tenant entered into evidence rent receipts from February 2018 to February 2020 showing that the tenant paid rent in the amount of $800.00 per month. The tenant

entered into evidence rent receipts from March 2020 to May 2020 showing the tenant paid $900.00 per month for rent. The tenant entered into evidence rent receipts showing that she paid $600.00 per month for the months of June and July 2020. The tenant testified that she also paid $600.00 in rent for the month of August 2020.

The advocate submitted that due to COVID 19, the landlord received a rental supplement on behalf of the tenant for April, May, June, July and August 2020 in the amount of $300.00 per month. The tenant entered into evidence a letter from BC Housing which states that BC Housing paid the landlords $300.00 per month towards the tenant's rent for the months of April 2020 to August 2020. The BC Housing letter goes on to state:

> By applying for and accepting the BC-Temporary Rental Supplement, the Landlord agreed that the amount of rental supplement paid will be applied to the rent due without delay, and that they are responsible to immediately arrange for refund of any overpayment of rent as a result of receiving these payments, in cooperation with the Tenant…. Any overpayment of rent due to the BC-TRS should be refunded directly to the Tenant, unless the Tenant and Landlord agree otherwise.

The advocate submitted that the landlords reimbursed the tenant $300.00 for the rent supplement they received from BC Housing for the month of May 2020, because the tenant paid the rent of $900.00 for that month and the landlords received the $300.00 supplement from BC Housing. The advocate submitted that the landlords did not reimburse the tenant for the $300.00 rental supplement they received for the month of April 2020, even though the tenant paid $900.00 in rent for that month.

The advocate submitted that the tenant is seeking to recover the $300.00 overpayment of rent for the month of April 2020.

The advocate submitted that the rent increase was not done in the correct form and was more than the maximum allowable increase permitted under the *Act.* The advocate submitted that the tenant is seeking the return of the illegal rent increase for the months of March 2020 to August 2020 in the amount of $600.00.

The advocate submitted that on August 1, 2020 the tenant tried to pay the landlords $300.00 in rent for the month of August 2020 because the landlords still owed the tenant for the April 2020 rental supplement that was not reimbursed to the tenant. The

tenant testified that the landlords refused to accept the $300.00 and were angry with her so she paid the full $600.00 for August 2020. The tenant entered into evidence a video of her attempt to pay the landlord $300.00 and the landlord's refusal to accept.

The advocate submitted that after the above incident, on August 1, 2021, the landlords served the tenant with a One Month Notice to End Tenancy for Cause (the "Notice") with an effective date of August 31, 2021. The Notice was entered into evidence. Page two of the Notice requires the landlord to select the reasons for ending this tenancy and to provide details of cause. The entire second page of the Notice was left blank and not filled in by the landlords.

The advocate testified that the tenant filed an application with the Residential Tenancy Branch to cancel the Notice but decided to move out before the hearing which was held on September 28, 2020. The tenant testified that she moved most of her belongings out of the subject rental property on August 22, 2020 and planned to come back on August 23, 2020 to collect the rest of her possessions. The tenant testified that on August 23, 2020 when she attended at the subject rental property, the landlords had changed the locks and she could not gain access.

The tenant testified that she called the police who spoke with the landlords and convinced the landlords to give the tenant access. The tenant testified that the landlords briefly allowed her access to collect the rest of her possessions. The tenant testified that the landlords had already entered the unit and put her possessions in garbage bags. The tenant testified that when she opened the bags, she saw that the landlords had smashed her blender, coffee maker, microwave and toaster oven, rendering them unusable. No receipts or pictures of the alleged damage were entered into evidence.

The tenant entered into evidence two signed witness statements which confirm the tenant's testimony that the landlord changed the locks on August 23, 2020.

The tenant submitted that she replaced all of the appliances broken by the landlord with the exception of the microwave. The tenant testified that she did not keep any of the receipts and did not think to take photographs of the damage to her possessions. The tenant testified that she found advertisements for similar products and entered these advertisements into evidence.

The tenant entered into evidence an advertisement for a vintage blender on ebay for $100.10. The tenant testified that the blender broken by the landlords looks like the

ebay advertisement. The tenant testified that her blender was approximately six years old when it was destroyed.

The tenant entered into evidence a picture of a coffee maker on a store shelf with the price tag of $84.99 visible. The tenant testified that her coffee maker was approximately three years old when it was destroyed.

The tenant entered into evidence a picture of a coffee maker on a store shelf with the price tag of $84.99 visible. The tenant testified that her coffee maker was approximately three years old when it was destroyed.

The tenant entered into evidence an advertisement for a microwave in the amount of $129.99. The tenant testified that her microwave was approximately eight years old when it was destroyed.

The tenant entered into evidence a picture of a toaster oven on a store shelf with the price tag of $59.99 visible. The tenant testified that her toaster oven was approximately two years old when it was destroyed.

The advocate submitted that the tenant is seeking the replacement cost of her damaged appliances.

The advocate submitted that the tenant sent the landlords a letter via regular mail on September 11, 2020, requesting the return of her security deposit. The September 11, 2020 letter was entered into evidence. The advocate submitted that the tenant served the landlords with RTB form #47 Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit, via registered mail on September 16, 2020 because the September 11, 2020 letter was not served correctly. The tenant entered into evidence a registered mail receipt for the September 16, 2020 mailing. The tenant entered into evidence RTB form #47 in which the tenant provided her forwarding address. The tenant testified that the landlords did not return her security deposit.

The advocate submitted that the tenant is entitled to double the return of her security deposit because the landlords did not return the security within 15 days of receipt of the tenant's forwarding address.

The advocate submitted that the tenant paid rent for the entire month of August 2020 and the landlords illegally denied the tenant access to the unit from August 23-31. The

advocate submitted that the tenant is entitled to recover rent paid to the landlord for occupation of the subject rental property from August 23-31, 2020 in the amount of $261.29 (pro-rated daily rate for nine days).

The advocate submitted that the tenant is entitled to collect one month's rent from the landlord in the amount of $900.00 because the tenant was forced to move out one month early. The advocate submitted that the corrected effective date on the Notice was September 30, 2020, not August 31, 2020 because one clear month's notice must be given to end a tenancy under section 47 of the *Act.*

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Based on the tenant's undisputed testimony and the two witnesses statement entered into evidence, I find, on a balance of probabilities, that the landlord locked the tenant out of the subject rental property on August 23, 2020. I accept the tenant's testimony that she paid the landlords $600.00 for the month of August 2020 and BC Housing paid the landlords $300.00 towards the tenant's August 2020 rent. I find that the tenant paid for occupation of the subject rental property until August 31, 2020, and that this occupancy was denied by the landlords.

Section 31(1.1) of the *Act* states:

> (1.1)A landlord must not change locks or other means of access to a rental unit unless
>
> > (a)the tenant agrees to the change, and
> >
> > (b)the landlord provides the tenant with new keys or other means of access to the rental unit.

I find that the landlords changed the locks contrary to section 31(1.1) of the *Act* which resulted in a loss of use and occupancy of the subject rental property. I find that the value of this loss is calculable pursuant to the following calculation:

> $900.00 (rent) / 31 (days in September) = $29.03 (daily rate)
>
> $29.03 (daily rate) * 9 (days access denied) = $261.27

I award the tenant **$261.27** for loss of use and occupancy of the subject rental property from August 23-31, 2020.

The tenant is claiming one month's rent in the amount of $900.00 for the failure of the landlord to state the correct effective date on the Notice; thereby evicting the tenant on August 31, 2020 instead of September 30, 2020. As noted earlier in this decision, in order to be successful in a claim, the tenant must prove that a loss was suffered. I find that the tenant has not proved that a loss of $900.00 was suffered as a result of the incorrect effective date being placed on the Notice.

The tenant was able to find alternate accomodation and was not forced, for example, to spend extra money in a hotel. As no quantifiable loss was suffered as a result of the incorrect effective date being put on the Notice, I find that the tenant is not entitled to one month's rent. I also note that pursuant to section 53(2) of the *Act* incorrect effective dates on notices to end tenancy automatically change to the earliest date that complies

with the section in question. Pursuant to section 47 of the *Act,* the Notice was automatically corrected to have an effective date of September 30, 2020.

Sections 42 of the *Act* states:

> **42** (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
>
> (a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
>
> (b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
>
> (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.
>
> (4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I find that the $100.00 per month rent increase from March 2020 to August 2020 was not done in accordance with section 42(3) of the *Act* because it was verbal and therefore not done in the approved written form. Notices of rent increase must be in writing and on Residential Tenancy Branch form #7. As I have determined that the notice of rent increase is of no force or effect pursuant to section 42(3) of the *Act*, I decline to consider if it is void under other sections of the *Act.* As the rent increase was not completed in accordance with the *Act*, I find that the landlord was not permitted to charge $100.00 extra per month for the months of March to August 2020 and the tenant is entitled to recover the **$600.00** extra paid for those months.

Based on the tenant’s undisputed testimony, the undisputed submissions of the advocate and the letter from BC Housing, I find that BC Housing paid the landlord $300.00 towards April 2020’s rent and the tenant paid the landlords $900.00 towards April 2020’s rent. I accept the advocate’s undisputed submission that the landlord did not refund the tenant the $300.00 overpayment of rent. Pursuant to the letter from BC Housing I find that the landlord was required to refund the tenant the $300.00 overpayment, as this was not done, the tenant is entitled to the return of the **$300.00.**

Based on the September 16, 2021 registered mail receipt entered into evidence, I find that the landlords were served with the tenant’s forwarding address in accordance with

section 89 of the *Act.* I find that the landlords were deemed served with the tenant's forwarding address on September 21, 2020, in accordance with section 90 of the *Act.*

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

The landlord has not either filed a claim seeking authorization to retain the tenants' security deposit or returned the tenant's security deposit within 15 days of their deemed receipt of the tenant's forwarding address. Pursuant to section 38 of the *Act*¸ the tenant is therefore entitled to receive double her security deposit in the amount of **$700.00.**

I accept the tenant's undisputed testimony that the landlords wrecked her blender, coffee maker, microwave and toaster oven. The tenant entered into evidence advertisements and photographs of price tags of similar products but did not provide the receipts showing the actual loss suffered by the tenant. I find that the advertisements and photos do not prove the loss that was suffered but offer an idea as to the range of damages suffered.

Residential Tenancy Guide #40 (PG #40) states:

> This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.
>
> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item

at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

The only appliance claimed by the tenant that is in PG #40 is a microwave. The tenant did not provide any evidence on the useful life of any of the other appliances damaged by the landlords.

I find that the tenant has failed to prove the loss suffered as receipts were not presented nor was evidence relating to the useful life of most of the appliances claimed so useful life calculations were not possible for all but the microwave.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the tenant has proved that the landlord damaged her microwave, blender, coffee maker and toaster oven which is an infraction of a legal right. I therefore award the tenant nominal damages in the amount of $30.00 for each appliance, for a total of **$120.00.**

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the **$100.00** filing fee from the landlords, pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	**Amount**
Pro-rated rent from August 23-31, 2020	$261.27
Illegal rent increase	$600.00
Rent subsidy return	$300.00
Doubled security deposit	$700.00
Nominal damages for appliances	$120.00
Filing Fee	$100.00
TOTAL	**$ 2081.27**

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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.

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 12, 2022

Residential Tenancy Branch