



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONA VISTA MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation for a monetary loss or other money owed, a return of their security deposit, and to recover the cost of the filing fee.

The tenant and the landlord's agents attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord and recovery of the cost of the filing fee?

Background and Evidence

The tenant submitted that the tenancy began on October 1, 2014 and ended on July 26, 2021. Monthly rent began at \$980 and was \$1,100 at the end of the tenancy. The security deposit paid was \$490. Filed in evidence was a copy of the written tenancy agreement.

The tenant's monetary claim is \$35,100.

The claim is partly explained, as follows:

monetary loss for having to move out because of the landlord's breach of my quiet enjoyment (\$34,784) + overpaid rent (\$60) + my filing fee (\$100)

[Reproduced as written from tenant's application]

The second part of the claim is \$56, explained as follows:

The landlord retained \$28.00 from my deposit. The landlord never gave me a copy of the move-in condition report. When I moved out, I was ONLY shown page 3 of the condition report, along with some other document that they never gave me a copy. They filled the condition report AFTER I moved out and then sent me a copy. I wrote on condition report I didn't want money retained. I ask 2 times \$28.00 = \$56.00 since I didn't get the money yet after more than 6 months.

[Reproduced as written from tenant's application]

As to the claim for overpaid rent, the tenant submitted the following, handwritten chart:

Initial rent : 980				
Year	max increase	rent changed	max rent	overcharged
2015	2.5%	1005	1004.50	$= 0.50 \times 12 = 6.00$
2016	2.9%	1035	1033.63	$= 1.37 \times 12 = 16.44$
2017	3.7%	1075	1071.87	$= 3.13 \times 12 = 37.56$
TOTAL OVERCHARGED RENT: \$60.00				

[Reproduced as written]

In addition, the tenant submitted the notices of rent increases.

As to the claim for \$34,784 for loss of quiet enjoyment, the tenant submitted that beginning in 2018, he began losing his quiet enjoyment. This stemmed from the building manager asking him to sign a marijuana addendum to the tenancy. When the tenant refused because this would add a material term changing his lease, the landlord threatened eviction. The tenant submitted that the building manager continued to randomly ask him to sign the marijuana addendum. When the building manager said he was the only tenant not to sign the addendum, he perceived it as a threat. The tenant submitted that he believed he became a target for the landlord. The tenant submitted he also received two threats of eviction letters from the landlord. The tenant's position was that the landlord had no right to unilaterally change his lease. The tenant submitted that at this point, it was evident to him that the landlord was acting "*MALICIOUSLY and in BAD FAITH*".

The tenant wrote, "*At this point the only reasons I didn't sign the document is: I didn't want to feel like a slave who obeys his master when threatened with a whip. I was not their slave, I was their tenant*".

The tenant submitted that he then experienced several acts of violence, including a deep roof dent to his car and a week before he moved out, he noticed a new scratch next to the door handle. The tenant submitted that shortly before he left, he was locked out of the laundry room, and believes he was targeted as he was the only one using the room at the time. Further, the tenant submitted this was intentional and thereafter, he became afraid to use the elevator. The tenant explained that other "tenants became stuck for a long time and the alarm bell doesn't work". The tenant submitted that "*I suspect that the landlord does the same thing, they watch and INTENTIONALLY stop the elevator to scare the targeted tenants.*" The tenant submitted that he then began mostly using the stairs to access his 6th floor apartment.

The tenant submitted that he realized papers in one of his drawers had been moved one day and believed it was the landlord as he only had one door key he never shared. The tenant testified that he believed the landlord came into his rental unit and put poison in his coffee while he was out, so he threw it out. However, the tenant said he could not prove this.

The tenant submitted it was hard to prove who was responsible for all the events that happened to him, but attributed the acts to the landlord. This caused the tenant to wonder "*what other BREACH OF MY QUIET ENJOYMENT of the apartment they would do to make me leave. So gradually, I came to expect the worst from them, and I started to check in the internet for similar apartments but similar apartments rented for at least \$1800 per month, and I was paying less than \$1100*".

The tenant wrote that he finally found and bought a condo outside the area he was living, but that area was not as desirable as where he previously lived. For instance, his new area is far from friends, the ocean, mountains, culture, and hiking.

For the above reasons, the tenant seeks compensation for breach of quiet enjoyment, as he claims he was forced to leave.

In support of the amount claimed, the tenant wrote:

It is difficult for me to estimate a fair compensation for having to move far from the [REDACTED]. It is certainly worth more than \$100,000 but I can't figure a number. I lived there from October 6, 2014 to July 26, 2021: approximately 6.8 years. I would have remained in my apartment forever, if not for the landlord's malicious actions. BUT FOR MY COMPENSATION FOR HAVING TO LEAVE, LET'S ASSUME I WOULD HAVE REMAINED IN THE APARTMENT FOR ANOTHER 6.8 YEARS, I.E. SAME TIME I HAVE LIVED THERE.

I counted the difference between the rent I was paying compared to the rent I would have had to pay for a similar old apartment in [REDACTED]. On internet, I found a similar small old 1-bedroom apartment with sea view two blocks away (document 2F), asking 1900\$ rent, available for March 2022.

I was paying \$1100 when I left, so I calculate my claim as follows:

$(\$1900 \text{ comparable rent} - \$1100 \text{ rent paid}) \times 12 \text{ months} \times 6.8 \text{ years} = \$65,280.$

However I reduce my claim to \$34,784 due to the \$35,000 limit.

[Reproduced as written except for anonymizing
personal information to protect privacy]

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As to the claim of \$56 dollars, the tenant submitted that the landlord returned the security deposit, but \$28 was missing. The tenant submitted that the \$28 should be doubled.

As to the claim for the rent increase, the tenant submitted that he knew the landlord was overcharging, but was afraid to say anything and left a letter at the end of the tenancy asking for the overpaid rent.

Landlord's response –

The landlord's agent testified that in no way did they harass the tenant or force him to leave. The agent submitted that they stopped asking the tenant to sign the marijuana addendum when he continued his refusal to sign.

As to the rent increase issue, the landlord said that it appeared that their system at that time used for calculating rent increases rounded up the amounts, rather than using the exact amount, so there would be a slight unintentional overpayment.

The landlord confirmed that they deducted the amount of \$28 from the tenant's security deposit prior to returning the balance of \$462. The landlord submitted that there was a charge for \$20 for cleaning and \$8 for a bulb. This was noted on the security deposit refund letter sent with the refund. I note the landlord's evidence shows that the landlord was successful in a prior dispute resolution against the tenant for a carpet cleaning claim, and the landlord was given a monetary order in the amount of \$226.

Included in the landlord's filed evidence was the tenant's written notice of June 29, 2021, that he was vacating the rental unit on July 31, 2021.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

The claiming party, the tenant in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Claim of \$34,784 for loss of quiet enjoyment –

Section 28 of the Act protects a tenant's right to quiet enjoyment.

I find the tenant submitted insufficient evidence to support this claim for loss of quiet enjoyment. The tenant opined that the landlord sabotaged the elevator for all tenants in the building, poisoned his coffee while he was out one day, and damaged his car. However, the tenant confirmed he had no evidence to support these allegations.

I do not find sufficient evidence that the landlord asking the tenant to sign an addendum to the tenancy agreement in 2018 caused a loss of quiet enjoyment. The tenant refused to sign the document and the tenancy continued.

I find the tenant submitted insufficient evidence and provided no basis to support his claim that he would have stayed in the rental unit for another 6.8 years. I find this was speculation on the tenant's part. Apart from that, as the tenant gave notice to end the tenancy and then vacated, I find it was the tenant's choice to move. I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant. I also find the tenant was not required to move out by operation of the Act and I therefore **dismiss** his claim for \$34,784, **without leave to reapply**.

Claim of \$56 –

Section 38 of the Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the deposit.

In this case, the tenant provided his written forwarding address in his notice to vacate letter and the tenancy ended on July 26, 2021. Therefore the landlord had until August 10, 2021, to return the tenant's security deposit of \$490, in full, or file an application against the deposit. The evidence shows that the landlord returned a large portion of the security deposit, but withheld \$28. Although the landlord filed an application for dispute resolution afterwards, they did not claim against the security deposit. I therefore find that the tenant has established a claim for recovery of double the balance of the security deposit, in the amount of \$56.

Overpaid rent, \$60 –

I considered whether the tenant did whatever was reasonable to minimize the damage or losses, as required by Act. I find he did not.

I find a reasonable way to minimize a claimed loss is to take immediate steps to make the claim. In this case, the tenant said he was overcharged by \$6 in 2015, \$16.44 in 2016, and \$37.56 in 2017. The tenant submitted that he did not mention the matter to the landlord until the end of the tenancy and did not make his application for compensation for overpayment until more than 7 months after the tenancy ended in July 2021.

I find by not bringing this claim in a timely manner after noticing the issue the tenant allowed the claim to build and grow.

On this basis, I find the tenant failed to mitigate his loss as required by section 7(2) of the Act as it is unreasonable to wait until the tenancy was over and years after 2015, at the first alleged incident, to take any appropriate steps.

Due to this delay, I find the legal doctrine of "waiver" applies here, as I find the tenant's clear intention was to forgo the exercise of his contractual right under the tenancy agreement.

I therefore find the tenant submitted insufficient evidence to meet his burden of proof, and as a result, I **dismiss** the tenant's application for rent overpayment in the amount of \$60, **without leave to reapply**.

As the tenant was largely unsuccessful with his application, I decline to award the tenant recovery of his filing fee of \$100.

Given the above, I grant the tenant a monetary order in the amount of \$56, pursuant to section 67 of the Act.

Should the landlord fail to comply with this monetary order, this order must be served to the landlord for enforcement and may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's monetary claims for \$34,784 for loss of quiet enjoyment and \$60 for overpaid rent are dismissed, without leave to reapply.

The tenant's claim for the balance of his security deposit of \$28, doubled, is granted.

The tenant has been granted a monetary order in the amount of \$56.

The tenant's request for recovery of the filing fee has been declined.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 17, 2022

Residential Tenancy Branch