



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary claim of \$490 for the return of what the tenants allege was an overpayment of rent of \$490. The tenants are also seeking the return of their \$100 filing fee.

The tenants, a translator for the tenants, and the landlords attended the teleconference hearing. All parties were affirmed, and the hearing process was explained to the parties. The parties were provided an opportunity to ask questions. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they were served by the other party with documentary evidence and that they had the opportunity to review that evidence prior to the hearing. Also, neither party raised any concerns regarding the service of documentary evidence. As a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to a monetary order under the Act and if so, in what amount?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2020. According to the tenancy agreement, the monthly rent was \$1,415 per month and was due on the first day of each month.

The tenants wrote the following in their details of their dispute:

We started the rent on Apr 1st 2019, the fixed term lease ends on Jun 30 2021. At that time, our daughter was just born, the usage of our utilities has increased, we didn't know the rent increase freeze, we told the landlord that they could increase the rent a bit, the landlord conceal rent increase freeze and demanded to increase it by 5%. Recently we found that the rent increase freeze in 2021 and requested the landlord to return the overpayment, but they refused.

[reproduced as written]

The tenants confirmed that they did not receive a written request from the landlords to increase the rent. The landlords were asked why the tenants paid an additional \$70 per month between September 1, 2021 and March 30, 2022, when the tenancy ended. JL responded by stating that the tenants suggested to pay an additional \$70 per month, and that the landlords did not request a rent increase.

The tenants are seeking the return of the extra \$70 payment they made to the landlords as follows, which the tenants have described as an “overpayment of rent” as follows:

MONTH	AMOUNT PAID BY TENANTS
September 2021	\$1,485 (\$70 more than \$1,415)
October 2021	\$1,485 (\$70 more than \$1,415)
November 2021	\$1,485 (\$70 more than \$1,415)
December 2021	\$1,485 (\$70 more than \$1,415)
January 2022	\$1,485 (\$70 more than \$1,415)
February 2022	\$1,485 (\$70 more than \$1,415)
March 2022	\$1,485 (\$70 more than \$1,415)
TOTAL	(\$70x 7 months) \$490

JL testified that the tenants called WC in mid-August 2021 offering to pay an additional \$70 per month to the landlords. The landlords submitted an audio recording

conversation (Conversation), with a transcript of that Conversation from a telephone call between tenant EM and landlord on March 13, 2022 at 10:08 a.m. (Transcript). There are also two comments from tenant JX in the Transcript. The relevant portion of the Transcript before me reads as follows:

EM: uhhh

JL: We didn't, we didn't increase the rent.

EM: yeah, but the, but the point is my wife doesn't, doesn't agree with that. Because uh.

JL: Okay but we didn't increase the rent, you offered more money and I think because you were probably feeling guilty..

EM: yes

JL: ...about having another child.

EM: uhh

JL: I'm not, I'm not, I'm not sure why but you offered more money right?

EM: yeah

JL: yeah

EM: Because it's we have a discuss about that uh, last year, um, um, we are looking for a new house but, but we uh after a lease... (inaudible)

JX: (In Cantonese) Now right now don't say that much, just say your wife, your wife said it is, is "I am, I am I am not able to give you the money, I can't give it back" I already asked a lawyer, and I asked the government so I should get back the money, that's how it is.

EM: Ah uh..(laughs) The main point is WC told her that she won't give back the money. Because the reason that you have already said.

JL: Right, what did I, so, right

EM: So

JL: Because you offered the money right?

EM: So my wife, but my wife is very angry so, so she, she checked with uh residential tenancy office, okay

JL: Sure, yeah and it says, and it says, we're not allowed to increase the rent, right?

EM: (inaudible).. yes

JL: And we didn't increase the rent right?

EM: yeah I know, but the, but the reply is even though we agree, uh increase the rent, you have to uh have a written agreement signed by us, give it to you and then you have to give us

JL: mh hm, mh hm, mh hm.

JX: (In Cantonese) ... go back to eat

EM: ah okay, three months notice

JL: yeah so I understand all the laws but what I'm saying is

EM: yeah, yeah

JL: We didn't ask for more money, you gave us more money, and then what time did we ever ask for more money? And I think you were probably feeling guilty about four people down here using the resources, but we never asked for more money

EM: Yes

JL: you offered the money, we have spent the money, we have been very good to you,

EM: Yup

JL: ...you said you were moving out in December...

EM: Yup

JL: ...and we had listed the place, we had people coming to see it and then we had to cancel all that, you know? And again, again in January you know? It's like you have been, in the last couple of months it has been a very difficult relationship with you, and we've tried to be as accommodating as possible you know? So, and like today, you're supposed to be out from ten o'clock right?

EM: Yes

JL: Yeah and you're still, and you're still here right?

EM: Oh, you can ask us to leave.

JL: Mh hm I don't, I don't want to have to ask you to leave though, you know, we spoke to you a week ago, I only had to give you twenty-four hours notice.

EM: I know, I know, but we can stay here, that's the law

JL: Okay

EM: We can stay here, okay, okay, we don't discuss that okay, we'll the problem is my wife is very angry too, I know that uh, last year um, we proposed a little bit ah, rent increase.

JL: Yeah you proposed it.

EM: but

JL: Not us.

EM: Yeah I know, but WC doesn't, doesn't, doesn't told us, oh there's a rent increase, I really don't know, if she told me then, it won't be five percent, it's really high.

JL: I know, but we didn't ask for more money, we were totally accommodating.

EM: I know, I know, because you

JL: If you go, if you go somewhere and you want to pay more money, then they're not going to say no, who's going to say no to more money? Nobody, right?

EM: But she's offering five percent, oh I uh, I just rough uh, idea, oh okay two percent a year, then oh that's okay, so I agree. But, but recently, because of my sister, uh, told me that there's a rent increase outlaw, I had no idea, so we had to check, that's the reason why. I have told WC oh I that's okay, I'm not going to, to get it back uh.

JL: Right, so you already agreed to the rent, so you proposed a rent increase and then you said you didn't want the money and now like it's coming, like it's turning around one-eighty degrees.

EM: The difference is my wife doesn't agree, maybe uh, she can ... (inaudible)... she feel bad about that.

JL: And we have to show the apartment today and it's like, it looks like you still you know, live here and there's garbage everywhere, you know, it's not.

EM: Yeah, we are still living here. We paid the full month rent.

JL: I know, but it has

EM: I have told you, we have stuff here, but you can show, show, show the uh, uh, uh, uh, you're (laughs) prospective tenant.

JL: Prospective tenant, yeah, yeah. Mh hm.

EM: We can clean up for all the suite.

JL: Okay, alright, thanks.

[reproduced as written with initials replacing names specified on the cover page of this decision]

JL testified that JL's wife speaks Cantonese, whereas the tenants speak Cantonese and Mandarin. The Translator said the tenants stated during the hearing that the landlord set the amount of \$70 and not the tenants, which the landlords vehemently denied. JL stated, "where is that evidence"? The Translator referred to the Transcript and JL stated that it was the tenants who came up with the idea to pay more, \$70, and that the landlords would not refuse extra money from the tenants if they were paying them more each month for the months in question and noted on page 2 of this decision above.

WC testified that they did not ask the tenants for more rent at any time during the tenancy. JL summarized their position that they did not come up with the idea or suggest to raise the rent at all and that "nobody would turn down" an extra \$70 offered by the tenants. JL stated that the tenants offered to pay more as they likely felt guilty about the increase in the use of utilities due to the number of people in the rental unit. JL stated that receiving an offer of more money each month from the tenants and that the idea came from the tenants, is not a rent increase by the landlords under the Act.

According to the Translator the tenants stated that they believe the landlords are lying during the hearing. The tenants write in their application that the landlords have been "sneaky" by accepting more rent when they should not have.

Final comments by landlords

JL testified that they have always been good landlords but unfortunately things did sour between the parties; however when the tenants changed several move-out dates, the landlords worked with them and were "really good about it" and emphasized that they did not force the tenants out, or serve/suggest a rent increase. JL stated they were pretty compassionate, and it was an incredibly small space and the tenants already had one child in a small space when they moved in, and then had another child. JL denied putting any pressure on the tenants to move, even though the landlords knew the rental unit was very small for a family of four. JL stated that they are upset that the tenants have accused the landlords of "lying" and "being sneaky." JL also stated that EM does not speak strong English, which is why they asked EM several times and in different

ways about the landlords not requesting to raise their rent, and each time EM confirmed the landlords had not requested a rent increase.

Final comments by tenants/Translator

Tenant JX also goes by the name of “Kitty.” The Translator stated that Kitty testified that the landlords did not advise them that a rent freeze did not allow a \$70 increase in rent. Also, the Translator confirmed that Kitty raised the suggestion to pay more rent to the landlords. Finally, the Translator said the tenants testified that they did not receive 3 months’ prior notice to a rent increase.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what is reasonable to minimize the damage or losses that were incurred.

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.

I have carefully considered the documentary evidence submitted and the testimony of all participants. I find the testimony of the tenants through their Translator was contradictory, while the testimony of the landlords was consistent. I have reached this finding for the following reasons. At several times during the hearing, the tenants affirmed that the landlords were the ones to request an additional \$70 per month and denied that it was the suggestion of the tenants to pay \$70 per month extra to the landlords between September 2021 and the end of tenancy in March 2022. The Translator clearly confirmed that Kitty raised the suggestion to pay more rent to the landlords during the last portion of the hearing when the parties were providing the final comments. As such, I afford more weight to the landlords' testimony and find that on the balance of probabilities that the tenants more likely than not offered an additional \$70 as they felt guilty about the increased utilities with a family of four living in a very small rental unit.

In addition, I find the tenants have failed to meet the burden of proof as the tenants have provided no written documents or audio recordings to support that the landlords either verbally or in writing, requested to increase the tenants' rent. The landlords, however, provided both an audio recording and a transcript of a March 13, 2022 telephone conversation where landlord JL asks tenant EM multiple times and in several ways to confirm that the landlords did not request a rent increase, and that every related response, tenant EM confirmed the landlords did not request an increase in rent.

Based on the above, I find the tenants have failed to meet parts one and two of the 4-part test for damages or loss described above, and that the landlords have not breached the Act as a result. Further, I find that it is more likely than not that the tenants offered to pay an extra \$70 per month starting September 1, 2021 and continuing until the end of the tenancy in March 2022, and that the landlords were not required to refuse the offer of the additional \$70 per month. As a result of the above, **I dismiss the tenants' application without leave to reapply due to insufficient evidence.**

As the tenants' application has no merit and has been dismissed, I decline to award the filing fee to the tenants.

Conclusion

The tenants' application fails in its entirety as it has no merit.

The filing fee is not granted.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 7, 2022

Residential Tenancy Branch