Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNL-MT, MNDCT, OLC, FFT
Landlord: MNRL-S, MNDCL-S, FFL

Introduction

On July 22, 2022 the Tenant filed their Application for Dispute Resolution at the Residential Tenancy Branch, seeking:

- to dispute a two-month notice to end tenancy for landlord's use of property, needing more time to file the Application;
- compensation for monetary loss or other money owed;
- the Landlord's compliance with the legislation and/or tenancy agreement;
- reimbursement of the Application filing fee.

The Landlord filed their own Application on September 14, 2022, seeking:

- compensation for unpaid rent/utilities;
- compensation for monetary loss or other money owed;
- reimbursement of the Application filing fee.

The Residential Tenancy Branch crossed the Landlord's Application to that of the Tenant that was already in place. This enabled the two matters to be heard at the same hearing.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Branch* on December 13, 2022. In the conference call hearing, I explained the process and provided the participants the opportunity to ask questions.

Preliminary Matter – tenancy ended

At the outset of the hearing, the Tenant confirmed that they moved out from the rental unit on August 31, 2022. For this reason, I dismiss the Tenant's Application for cancellation of the Two-Month Notice, without leave to reapply.

Additionally, with the landlord-tenant relationship now ended, I similarly dismiss the Tenant's application for the Landlord's compliance with the legislation and/or tenant agreement. This is also without leave to reapply.

Preliminary Matter – Tenant's Application and evidence service to the Landlord

The Tenant set out how they provided the Notice of Dispute Resolution Proceeding (the "Notice") to the Landlord after the Residential Tenancy Branch sent that document to the Tenant on August 9, 2022. The Landlord confirmed they received this via registered mail from the Tenant. This included evidence the Tenant provided with their Application.

The Tenant updated their monetary claim on November 22, 2022. They did not amend the Application at the Residential Tenancy Branch; instead, they updated their evidence to reflect new amounts, via an undated edited Monetary Order Worksheet. The Landlord in the hearing confirmed they received this evidence on November 25.

Preliminary Matter – Tenant's additions to their claim

The Tenant's updated Monetary Order Worksheet adds an amount directly related to the tenancy already ended. This is an amount that is the equivalent to 12 months of rent in line with the provisions in the *Act* that set out a landlord must pay this amount where they do not accomplish the stated purpose for ending the tenancy via a two-month notice.

The Tenant acknowledged in the hearing that the updated claimed amount exceeded the allowable amount for compensation at the Residential Tenancy Branch. The *Act* s. 58(2) provides that an arbitrator must not determine disputes involving claims for debts or damages if the monetary amount claimed exceeds the limit set out in the *Small*

Claims Act. The limit is $35,000. The Tenant stated they made a separate application for recovery of this separate compensation that concerns the end of tenancy.

I find the Tenant abandoned the updated amount for the purpose of this hearing. I set out the Tenant's claim for compensation as originally filed in the decision below. I give no consideration to the issue of the Landlord's obligations post-tenancy as set out in s. 51 of the *Act*.

As stated, the Tenant edited the Monetary Order Worksheet, and left the edited version undated. They added a claim for double the amount of the security deposit. I do not accept this as a late amendment, given only the worksheet edit and additions to their evidence, occurring 4 months after the Tenant filed their original Application, and no filed amendment form that was disclosed separately to the Landlord. I find this results in prejudice to the Landlord where they did not receive proper notice of the Tenant's amendment, a separate process that is set out in the *Rules of Procedure*. As well, the Tenant provided a fair amount of evidence and testimony on this singular point. Given that there was no proper amendment to the Application, this did not receive ample review in the hearing.

I do not accept the Tenant's security deposit claim as an amendment to their Application. On that additional piece of their claim, the Tenant must either file a separate Application, or amend any other application they have already in place, pending another hearing.

Preliminary Matter – Landlord's Application and evidence service to the Tenant

At the start of the hearing the Landlord set out how they provided the Notice of Dispute Resolution Proceeding (the "Notice") to the Tenant after the Residential Tenancy Branch sent that document to the Landlord on September 28, 2022. They were clear this was the single Notice of Dispute Resolution Proceeding document.

This was via process server who attended and spoke to the matter as a witness in this hearing. For the Landlord's evidence they relied on for this hearing, the first mailing was made with a PO Box number on November 25; the second attempt was via a second address on November 29. The Tenant confirmed they received the material mailed on November 29, obtaining that item on December 5.

The *Residential Tenancy Branch Rules of Procedure* sets the following timeline:

- for evidence provided in response to the Tenant's Application, Rule 3.15 sets out the timeline of "as soon as possible", and then:

> the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing

In response to the Tenant's Application, the Landlord provided their evidence to the Residential Tenancy Branch on December 3, 2022. This was a 21-page package of evidence showing the mailings of November 25 and November 29. The Landlord provided this material to the Residential Tenancy Branch again on December 13.

- for evidence provided on their own Application – that is, for compensation on rent amounts and other money owed – the Landlord provided evidence in relation to their Application on December 6, 2022, then a duplicate of that evidence on December 13, 2022.

Rule 3.13 provides that a party must submit their evidence directly to the Residential Tenancy Branch and served to the other party in a single complete package.

Rule 3.14 then provides:

> . . . documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch . . . not less than 14 days before the hearing.
>
> In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Rule 3.17:

> Evidence not provided to the other party and the Residential Tenancy Branch directly . . . may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.
>
> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance

> of late evidence does not unreasonable prejudice one party or result in a breach of the principles of natural justice.

I find the Landlord submitted evidence to the Residential Tenancy Branch for their own Application for rent and other compensation only on December 6, 2022. The same evidence via registered mail to the Tenant arrived no earlier than December 2. This is not "not less than 14 days before the hearing", despite the Landlord having their Application finalized, and sent to the Tenant, by September 28.

The Landlord provided tracking information for the evidence they sent on November 29 and the Tenant confirmed they received this evidence on December 5, 2022. The tracking record verifies a delivery date to the destination on December 2, 2022.

This is not, as per Rule 3.14, service of the evidence for their Application not less than 14 days as required in the Rules. I find the Landlord's late forwarding of evidence in this manner unnecessarily prejudiced the Tenant. The package was available for delivery only on December 2, 2022. The Tenant, as the Respondent in the Landlord's Application, was not afforded full opportunity to review the evidence and provide their own evidence in response that would have met the timeline for a respondent as set in Rule 3.15.

For this reason, I apply Rule 3.17 and exclude the Landlord's evidence on their Application from consideration.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to compensation for rent and/or utilities owing, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant set out the following details of the agreement they had in place with the Landlord since the start of the tenancy in 2016:

- they provided the initial month's rent of $2,300 and a security deposit amount of $1,150 on their first visit to sign the tenancy agreement
- the utilities for gas and hydro remained in the Landlord's name and the Landlord would provide the invoices when payments were required
- the Landlord did not provide a copy of the tenancy agreement
- the Landlord did not provide a receipt for the first month's rent or damage deposit
- the Tenant never received receipts for either rent payments or utility payments
- the Landlord requested cash, and would not allow payment of rent via e-transfer or cheque.

In the hearing, the Landlord confirmed the basic details about the start of the tenancy. Their recollection was that it was the Tenant who wanted to do cash, this because they were always 2 or 3 days late with rent payments. The Tenant also never asked for a receipt.

i. Tenant's claim -- increased rent amounts previously paid

Specific to rent increases over the course of the tenancy, the Tenant provided the following information:

- the Landlord informed the Tenant in March 2017 they would have to increase the rent in April, for an additional $200 per month (*i.e.*, to $2,500, 8.6% increase). The reason stated to the Tenant was that the Landlord was losing money. The Tenant agreed to this rent increase.

- In June 2018, the Landlord requested another rent increase; however, the Tenant told them they could not afford it because of the previous increase. The Landlord did not increase the rent at this time.

- In February 2019 the Landlord requested another rent increase, to $2,565 (*i.e.,* a 2.6% rent increase).

- In October 2020 the Landlord again advised they needed to increase the rent; the alternative was a pending sale of the home. They increased the rent by $435 per month (*i.e.*, to $3,000, a 16.8% increase). The Tenant advised they could not pay this; however, the Landlord placed the property on sale. The Landlord again imposed the rent increase in November, forcing the Tenant's agreement with the only alternative being an end to this tenancy during a public health matter and a housing crisis. The Tenant paid $3,000 per month starting on December 1, 2020 and the Landlord cancelled the sale of the home.

The Tenant provided a written account of the rent increase issue as it forms the basis of their claim for compensation. They stated that this was their first tenancy; therefore, they were unaware of the allowable rent increase amounts. They learned of this when speaking to the Residential Tenancy Branch on July 18, 2022. During the tenancy they did not receive a notice of rent increase with a three months' timeframe. Moreover, each increase was greater than the "allowable increase percentage" as per the *Act*, and the Landlord demanded an increase within the first 12 months of the tenancy.

In their evidence on these points, the Tenant provided text messages showing the difficulties they had with the Landlord showing the rental unit property for sale, a chart showing each calendar year's allowed maximum rent increases, and detailed charts showing the amount of rent they paid for each calendar month during the tenancy, to show overpayment.

The Tenant bases their claim for compensation here on the amount of rent they overpaid from July 1, 2016 to July 2022. This amount is $24,230. They provided the amount of $10,030 as an amount they overpaid if the Landlord followed "if the allowable amount was followed" (*i.e.*, if the Landlord increased rent in the proper legal fashion.)

In response, the Landlord provided that the Tenant was creating all of these details for the purpose of blackmailing them after the tenancy ended. They recalled that the Tenant was collecting rent from subtenants (who were friends and/or family) they had in place at the rental unit home. They proposed paying extra rent to the Landlord, saying 'this is good for you' in relation to the rent amount. The Landlord also described the Tenant using the rental property as a workshop for some business they operated.

At the time of the potential sale, the Tenant stated to the Landlord that a new owner would accept $3,000 per month in rent, so that should be the amount that they should charge the Tenant here. The Landlord reiterated three times in their submission that their sales agent could verify this testimony as true.

The Landlord also described the Tenant's claim as subject to a two-year time limit imposed by the *Limitation Act*. This would positively bar any claim for reimbursement due to the expiry of the statutory time period in place.

In summary, the rent increases that occurred during the tenancy were because the Tenant offered these extra amounts.

The Tenant in the hearing denied these statements. They stated they were not subletting at the rental unit, and they never were the ones who offered rent increases to the Landlord.

ii. Landlord's claim – unpaid rent, utilities and other

The Landlord did not complete a Monetary Order Worksheet in line with their claim. On their Application, they provided the amount of $4,014.55. This includes August rent ($3,000), utilities (combined $1,1014.55).

The Landlord claimed for the rent for the month of August. I infer from the Application that the Landlord is claiming that the final month of this tenancy – being August 2022 – was left unpaid by the Tenant.

The Landlord listed three separate bill amounts on their Application: $186.31; $40.66; and $37.58.

The Tenant confirmed amounts in their records as: $183.35; $40.66 and $37.58. The Tenant stated they owed this money properly as utilities amounts incurred during the tenancy.

Additionally, the Landlord added $750 to this amount for the cost of replacement of the washing and drying machines in the rental unit. They described being "surprised" about this discovery after the Tenant moved out, necessitating the need to replace them.

The Tenant responded briefly in the hearing to say that nothing happened to the washer/dryer upon their vacating at the end of the tenancy.

Analysis

i. Tenant's claim -- increased rent amounts previously paid

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find as fact that the rent amount increased over the course of the tenancy. The single piece of evidence to confirm this was the Landlord's own claim to the final month of rent for August 2022, which they listed on their Application as $3,000 of unpaid rent. Aside from the simple start and end rent amounts, there is no evidence aside from the Tenant's ledger sheet.

I find it implausible that the Tenant agreed to pay substantial rent increases over the course of this tenancy without protest or other forms of dispute. For three of the four rent increases listed the Tenant simply agreed to pay, while in June 2018 it appeared there was some room for negotiation in the matter of a rent amount to pay where the Tenant described "we told [the Landlord] we could not afford another rent increase as the last increase was so high." Despite this, in the subsequent two years following the Tenant paid further rent increases, with the final being a substantially high rent increase as presented in their account.

The Tenant referred to personal matters that were happening over the course of the tenancy, ones involving definite impacts to both their income and their ability to pay increased rent. These were a matter involving family law and restricted employment due to public health measures. As described, these were severe matters affecting their ability to pay sudden and, especially in the case of December 2020, extreme rent

increases, yet the Tenant did not describe an inability to pay, late rent payments, or threats from the Landlord to end the tenancy because of unpaid rent.

It strains credibility that in one case the Landlord was open to negotiation and appeared to simply ask the Tenant for more rent while in other years the rent increase was imposed unilaterally with the Tenant agreeing to pay. Further, the Tenant described being under financial hardship during the tenancy, yet there was no description of not being able to pay. I find this lends credence to the Landlord's response that the Tenant was subletting or otherwise supplementing their income through use of the Landlord's own property.

It was widely publicized in March 2020 through to December 31, 2021 that rent increases in British Columbia were not permitted under temporary relief measures the province imposed because of public health measures that limited several citizens' income and ability to pay rent. I find it more likely than not that the Tenant was aware of these rent increase restrictions, despite their statement in the hearing that they were consciously avoiding news because of their anxiety during the public health crisis. The Tenant in their own evidence presented a link to a news article that they sent to the Landlord, specifically on the issue of open houses for the purposes of sale. The Tenant was resourceful enough on that singular point; however, their claim is that they were completely unaware of full prohibitions on rent increases. I find it strains credibility that the Tenant was unaware on restrictions on rent increases during this time, at that time agreeing to a sudden rent increase at 16.9%.

Additionally, the Tenant did not present a plausible account where their sudden realization on overpayment of rent stemmed from. They obviously had some discussion with the Residential Tenancy Branch when making their Application to initially challenge a notice to end tenancy, but the Tenant did not present further on the context of rent amounts paid, and the process whereby a landlord can increase rent did not come up in discussion. I find the Tenant's account lacking with no description on their sudden realization that rent increases were illegal.

The Tenant also presented lists of rent amounts over the years; however, the Tenant did not produce other financial information showing proof of rent transactions. While they paid in cash, there was no proof positive of that cash flow stemming from bank accounts or other sources. The Tenant did not present *how* they facilitated payments of cash to the Landlord each month.

In addition to the Tenant's credibility on these points, I find the principle of mitigation is in place where the Tenant has come back after the tenancy has ended (and, most significantly, after six years) to claim overpaid rent amounts. This ties back to the Tenant's credibility on their inexperience and lack of knowledge as a new tenant. Despite being under financial hardship during this tenancy, I find it implausible that the Tenant did not agree to rent increases. This does not match with a sudden realization after the tenancy ended that they were overpaying, and were not aware of the avenue of dispute resolution to prevent illegal rent increases along the way.

During the tenancy, every avenue to either dispute rent increases, or claim recompense within a reasonable amount of time was available to the Tenant. I don't believe the Tenant's account that they were simply unaware of the matter of illegal rent increases, particularly in 2020 when rent increase freezes were in effect and widely publicized. From the testimony of the two parties, and in light of the issues with the Tenant's credibility on this distinct issue, I find it more likely than not that the Tenant willingly paid the rent amounts, and had an explicit agreement in place with the Landlord on these amounts. This prevents the Tenant at this juncture from returning to claim all of the overpaid amounts back from the Landlord only after the tenancy ended in an acrimonious manner.

In sum, the Tenant made no dispute of illegal rent increases during the tenancy, despite being under financial hardship. I find they agreed to the rent increases with no clear evidence of difficulty to them; therefore, there was no violation of the *Act* or the tenancy agreement by the Landlord here. Moreover, the Tenant took no steps during the tenancy to mitigate a loss to them, despite the steep rent increase along with the way.

Though not impacting my findings set out above, while the Landlord cited the *Limitation Act* as applying in this scenario, I find s. 60(1) applies, with nothing preventing the Tenant from making their claim within 2 years of the date the tenancy ended.

For the reasons above, I dismiss the Tenant's claim for compensation, without leave to reapply.

ii. Landlord's claim – unpaid rent, utilities and other

As stated in the preliminary section above, the Landlord provided evidence late in this Application process. This impacted the Tenant's ability to respond to the issues; moreover, the Landlord's accounting was not clear on their Application, and the omission of evidence did not assist.

I find the Landlord has not overcome the burden of proving why the Tenant owes for the final month of rent. What is on the record is the Landlord ending the tenancy with a Two-Month Notice to End Tenancy for Landlord's Use. As per s. 51(1) of the *Act*, a tenant is entitled to receive one month's rent payable under the tenancy agreement. The Landlord has not provided sufficient evidence to show why the Tenant was not entitled to this statute-authorized single month of free rent. I dismiss this piece of the Landlord's Application for this reason.

The Landlord did not provide evidence to show why the Tenant is obligated to pay for the replacement of appliances that are alleged missing at the end of the tenancy. There is no evidence on the make or model of said appliances that were allegedly taken by the Tenant, nor is there evidence that the appliances were there at the start of the tenancy. Because I excluded the Landlord's evidence from consideration, there is nothing to establish the value thereof. In the hearing, the Landlord referred alternately to the amounts of $750, and then $800. I dismiss this piece of the Landlord's claim for this reason.

The Tenant agreed to set amounts of utilities: $183.35, $40.66, and $37.58. The Tenant listed these amounts specifically in the hearing; I find it more likely than not that they verified the amounts by referring to invoices forwarded to them. I grant the Landlord this total amount of $261.59, deducted from the security deposit they are still holding. This is authorized via s. 72(2)(b) of the *Act*.

The Landlord made a claim against the security deposit and did so on September 14, 2022. This is within 15 days of the ending of the tenancy on August 31, 2022. Because of this timeline, there is no doubling of the security deposit amount to the Tenant, as governed by s. 38(6). I authorize the Landlord to withhold the amount of $261.59, as agreed to by the Tenant. I grant the Tenant a monetary order for the remainder of the security deposit amount, at $888.41.

Because the Landlord was not successful in this Application, I grant no reimbursement of the Application filing fee.

I find the Tenant was also unsuccessful in their Application. I grant no reimbursement of the Application filing fee to them for this reason.

Conclusion

Pursuant to 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of $888.41, for the return of the security deposit held thus far by the Landlord, minus the specific amount owed to the Landlord for utilities. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 s. 9.1(1) of the *Act*.

Dated: December 20, 2022

Residential Tenancy Branch