



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT

Introduction

The Tenant seeks a monetary order pursuant to s. 67 of the *Residential Tenancy Act* (the “*Act*”) for compensation or other money owed.

M.K. appeared as the Tenant. H.W. appeared as the Landlord’s agent and was joined by M.G. who was identified as the Landlord’s property manager.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issue to be Decided

- 1) Is the Tenant entitled to monetary compensation?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on January 1, 2019.
- A security deposit of \$598.00 was paid by the Tenant.

According to the Tenant, she is currently paying rent in the amount of \$1,267.98 on the first of each month. The Landlord's agent advises that a rent increase took effect on January 1, 2023 such that the Tenant is to pay \$1,268.00 on the first of each month. Both parties confirm that prior to the most recent rent increase, she was paying \$1,244.00 on the first of each month.

The parties provide a copy of the tenancy agreement in their evidence.

The Tenant advises that she seeks the return of money paid by her in rent from January 1, 2022 onwards following what she was an improper rent increase. I am directed to an email in the Tenant's evidence from the Landlord's agent sent to the Tenant on January 3, 2022. That email was a reminder to the Tenant of a rent increase that took effect on January 1, 2022 and that she failed to pay the new rent. The January 3, 2022 email also included an attachment, which stated the following:

Hello [B.],

You forgot to pay your rent increase.

Your rent for this year is \$973.00

We need to collect \$14.00 from you.

Thank you.

[Landlord's agent]

The attachment in the January 3, 2022 email notes a different unit number than the Tenant's rental unit. I further note that B. is not the Tenant.

A subsequent email sent from the Tenant to the Landlord's agent was provided to me by the Tenant. The email is undated and states the following:

Hi [Landlord's agent],

It seems I misread your January 3, 2022 rent adjustment email.

In your email to me, you actually said "Your rent for this year is \$973.00".

You didn't say your monthly rent is \$973. for this year, you said \$973. **for the year.**

Since I have already paid \$1226. in January 2022, I have overpaid for the year and into April 2023.

Below is your January 3, 2022 email for reference.

[Tenant]

I was also provided the following email by the Tenant in her evidence in which she sent an email to the Landlord's manager on January 17, 2022:

No.

You issues a rent increase notice in September 2021, and in January 2022 you issued a rent decrease retroactive to January 1, 2022.

[Tenant]

The Tenant advises that she was served with a 10-Day Notice to End Tenancy for unpaid rent following the dispute on rent in January 2022 and that she paid the increased rent from January 1, 2022 onwards. She seeks compensation for this overpayment from January 1, 2022 to date based on yearly rent of \$973.00 as set out in the January 3, 2022 email. She further says that yearly rent was increased by 2% on

January 1, 2023. I enquired what rent the Tenant paid at the outset of the tenancy, and she confirmed she paid \$1,195.00 per month as set out in the tenancy agreement.

The Landlord's agent indicates that this a month-to-month tenancy and that the Tenant was served with a notice of rent increase on in September 2021 to take effect on January 1, 2022. I am provided a copy of that notice of rent increase signed on September 17, 2021, which increased rent from \$1,226.00 to \$1,244.00 effective on January 1, 2022. The Landlord provides a proof of service for the September 2021 rent increase indicating it was left in the Tenant's mailbox on September 21, 2021. The Landlord's agent emphasized that the reminder email of January 3, 2022 mentioned by the Tenant was sent to her in error and that this was explained to the Tenant at the time.

Analysis

The Tenant seeks an order for monetary compensation.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

In this instance, the Tenant seeks compensation for overpayment of rent after a purported rent decrease provided to her by the Landlord's agent on January 3, 2022, which she says was retroactive to January 1, 2022. Looking to the content of the January 3, 2022 email, the attachment it was clearly addressed to B. a resident of another rental unit at the property. On its face, it is evident that the attachment for the other resident such that even if it could be construed as a rent decrease, it did not apply to the Tenant.

Further, in the emails provided to me by the Tenant she acknowledges receiving the September 2021 notice of rent increase, but argues that the Landlord rescinded that by issuing a retroactive rent decrease. No reasonable person would come to this conclusion. The Landlord's agent sent out a reminder of the rent increase to those tenants who had failed to pay the increased amount. The one the Tenant received was clearly addressed to another tenant at the building. The Landlord could have issued a 10-Day Notice to End Tenancy due to the Tenant's failure to pay the new rent on January 1, 2022. Instead, a less combative and friendly approach was taken.

I find it likely that the Tenant is wilfully misconstruing the contents of January 3, 2022 email for her own benefit and in a manner that does not consider the wider context of the tenancy. The Landlord's agent is quite right: this is a monthly periodic tenancy as set out in the tenancy agreement. The due date for rent is set out as the first of each month as per the tenancy agreement. Rent had been due on the first of each month for the whole of the tenancy, originally at \$1,195.00 and subsequently increased. Within this context, the Tenant receives an email on January 3, 2022 containing an attachment addressed to another person and construes it as an alteration of the terms of the tenancy agreement which drastically reduced rent and changed the term from a monthly periodic tenancy to a yearly periodic tenancy. Again, no reasonable person would come to this conclusion. I find the Tenant's argument entirely without merit.

I find that the notice of rent increase issued by the Landlord in September 2021 is valid. The Tenant acknowledged receiving it in her email of January 17, 2022. Rent, due on the first of each month, increased to \$1,244.00 on January 1, 2022 and has subsequently been increased again on January 1, 2023. I find that the Tenant has failed to demonstrate the Landlord has breached the *Act*, regulations, or tenancy agreement.

I further note that I find the Tenant's claim to border on an abuse the dispute resolution process. If I were empowered under the *Act* to grant an order that the Tenant pay the Landlord's costs, I would grant that order. I caution her to consider the merits of any future claim before making further application to the Residential Tenancy Branch.

Conclusion

The Tenant has failed to demonstrate she is entitled to monetary compensation. Her claim under s. 67 of the *Act* is dismissed 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: February 17, 2023

Residential Tenancy Branch