



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNDCT, RR

Introduction

This hearing dealt with the tenant's application, filed on May 16, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$7,000.00 for compensation for damage and loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- an order allowing the tenant to reduce past rent of \$2,000.00 for repairs, services, or facilities agreed upon but not provided, pursuant to section 65.

The landlord's agent ("landlord RR"), the landlord's lawyer, and the tenant attended both hearings. The tenant's advocate and the tenant's witness CS attended the first hearing only. At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The first hearing on September 26, 2022, lasted approximately 61 minutes. That hearing began at 9:30 a.m. with me, landlord RR, and the landlord's lawyer present. The tenant and her advocate called in late at 9:31 a.m. I did not discuss any evidence with the landlord or the landlord's lawyer in the absence of the tenant and her advocate. The tenant called her mother as a witness, witness CS, who was excluded from the outset of that hearing. Witness CS called in later during that hearing, during the tenant's presentation of evidence, and completed her affirmed testimony. That hearing ended at 10:31 a.m.

The second hearing on February 28 2023, lasted approximately 38 minutes from 9:30 a.m. to 10:08 a.m.

At both hearings, all hearing participants confirmed their names and spelling.

At the second hearing, the landlord's lawyer provided landlord RR's email address, and the tenant provided her email address, for me to send copies of this final decision to both parties.

At the first hearing, landlord RR provided the legal name and spelling of the landlord company ("landlord") named in this application. At both hearings, he said that the landlord owns the rental unit, and he provided the rental unit address. At both hearings, he stated that he is a property manager, employed by the landlord, and confirmed that he had permission to speak on its behalf at both hearings. At both hearings, he confirmed that the landlord's lawyer had permission to represent the landlord. At both hearings, he identified the landlord's lawyer as the primary speaker for the landlord.

At the first hearing, the tenant confirmed that her advocate had permission to speak on her behalf and she identified her advocate as the primary speaker for the tenant.

At the second hearing, the tenant stated that she "let" her advocate "go," since she did not want him to represent her any longer. She repeatedly stated that her advocate argued with me at the first hearing. She said that her advocate did not submit all of her evidence or present her submissions properly. She confirmed that she did not want any agent or advocate to represent her at the second hearing and she wanted to speak on her own behalf.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. During both hearings, all hearing participants separately affirmed, under oath, that they would not record both hearings.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, I informed them that I could not provide legal advice to them. At the second hearing, I informed them that I could not act as their agent or advocate. At the first hearing, I notified them that my role as an Arbitrator was to make a decision and/or enforce a settlement regarding this application. At both hearings, they had an opportunity to ask questions, which I answered.

At both hearings, neither party made any adjournment requests. At the first hearing, neither party made any accommodation requests.

At the second hearing, the tenant asked for an accommodation, asking me to be "understanding and compassionate," stating that she had a mental disability, memory

issues, and 7 concussions. The tenant did not make any requests or arrangements for accommodation prior to both hearings, nor did she refer me to any documentary evidence to support her medical issues, as noted above. However, I asked the tenant to inform me if she needed any information explained or repeated or if she had any questions during the second hearing and she agreed to same. I spent additional time during the second hearing, repeating, explaining, and answering the tenant's questions to appropriately accommodate her. At the end of the second hearing, the tenant agreed that I appropriately accommodated her, provided her with understanding, repeated and explained information to her, and answered her questions.

At the first hearing, both parties affirmed that they were ready to proceed, they wanted me to make a decision, and they did not want to settle this application. Both parties were given multiple opportunities to settle at the beginning and end of the first hearing and declined to do so.

At the first hearing, I informed the tenant and her advocate, and at the second hearing, I informed the tenant that, as the applicant, the tenant was required to prove her application on a balance of probabilities, as per the *Act*, *Residential Tenancy Regulation* ("*Regulation*"), Residential Tenancy Policy Guidelines, and *Rules*. At both hearings, I cautioned the tenant that if I dismissed her application without leave to reapply, she would receive \$0. The tenant affirmed at both hearings that she was prepared for the above consequences if that was my decision.

Preliminary Issue – First Hearing and Service of Documents

The first hearing on September 26, 2022, was adjourned to the second hearing date of February 28, 2023, since the first hearing did not finish within the 60-minute maximum hearing time.

At the second hearing, the landlord's lawyer and the tenant confirmed receipt of my interim decision, dated September 26, 2022, and notice of reconvened hearing, dated October 3, 2022. In my interim decision, and as informed to both parties during the first hearing, I noted the following:

This hearing did not conclude after 61 minutes and was adjourned for a continuation. The tenant and her advocate affirmed that they completed their submissions and evidence regarding the tenant's application, including evidence from their witness CS.

...

I informed both parties that the reconvened hearing is only to hear response submissions and evidence from the landlord and to hear response submissions from the tenant to the landlord's evidence, regarding the tenant's application for a past rent reduction of \$2,000.00 only. Both parties affirmed their understanding of same.

I informed both parties of the following information during this hearing. Both parties are directed not to serve any further evidence, prior to the reconvened hearing. No witnesses are permitted to testify at the reconvened hearing. Neither party is permitted to file any new applications (including the tenant's monetary claim for damage and loss of \$7,000.00, which was severed at this hearing) after this hearing date of September 26, 2022, to be joined and heard together with the tenant's application, at the reconvened hearing. Both parties affirmed their understanding of same.

The landlord's lawyer and the tenant agreed with the above information during the second hearing.

At the first hearing and in my interim decision, I noted the following. The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's advocate confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I found that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

At the second hearing, the tenant claimed that she submitted amendments to increase her monetary claims and she provided additional evidence on February 13, 2023. She said that she did not realize that she could not do so, until after she re-read my interim decision, which she agreed was first provided to her by email by the RTB on October 3, 2022, and then again by her advocate two weeks prior to the second hearing date. I informed the tenant that, as per my above clear verbal directions to both parties at the first hearing on September 26, 2022, and in my written interim decision of the same date, no further evidence or applications could be joined to be heard with this application, including the tenant's monetary claim for \$7,000.00, which was severed at the first hearing, as noted below. I notified the tenant that I would not be considering her amendments or additional evidence. The tenant affirmed her understanding of same. I was not required to consider the tenant's amendments or evidence in any event, since both parties settled the tenant's past rent reduction claim.

Preliminary Issue - Severing the Tenant's Monetary Application for Damage and Loss of \$7,000.00

At the first hearing and in my interim decision, I noted the following:

I informed the tenant and her advocate that the tenant was provided with a priority hearing date, due to the urgent nature of her claim related to a past rent reduction of \$2,000.00. I notified them that this was the central and most important, urgent issue that would be dealt with at this hearing. They affirmed their understanding of the above information.

I informed the tenant and her advocate that the tenant's monetary claim for damage and loss of \$7,000.00 was dismissed with leave to reapply. I notified them that this monetary claim was a non-urgent lower priority issue, and it could be severed at a hearing. I informed them that this was in accordance with Rules 2.3 and 6.2 of the RTB Rules above. They affirmed their understanding of the above information.

The landlord's lawyer and the tenant agreed with the above information during the second hearing.

The tenant claimed that she already filed a new RTB application for her monetary claim of \$7,000.00, as noted above. She said that she received an RTB hearing date in August 2023 for same.

Settlement Terms

The following settlement agreement was made by both parties, regarding the tenant's past rent reduction claim of \$2,000.00 only.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the second hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute, regarding the tenant's past rent reduction claim of \$2,000.00 only.

Both parties agreed to the following final and binding settlement of all issues currently under dispute, regarding the tenant's past rent reduction claim of \$2,000.00 only:

1. The landlord agreed to pay \$1,000.00 total, to MPA directly, not the tenant, by way of a cheque to be mailed by March 6, 2023, to the MPA office;
 - a. Both parties agreed that the above payment is a rent reimbursement for rent paid by MPA to the landlord, on behalf of the tenant, for this tenancy and rental unit;
2. The tenant agreed that this settlement agreement constitutes a final and binding resolution of her application, regarding her past rent reduction claim of \$2,000.00 only.

These particulars comprise the full and final settlement of all aspects of this dispute, regarding the tenant's past rent reduction claim of \$2,000.00 only. Both parties affirmed at the second hearing, that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed at the second hearing, that they understood and agreed that the above terms are legal, final, binding, and enforceable, which settle all aspects of this dispute, regarding the tenant's past rent reduction claim of \$2,000.00 only.

The terms and consequences of the above settlement were reviewed in detail, with both parties during the 38-minute second hearing. Both parties were given ample time to think about, discuss, ask questions, negotiate, and decide the settlement terms, during the second hearing. Landlord RR confirmed at the second hearing, that he had permission to make this agreement on behalf of the landlord.

At the first hearing, the tenant's advocate agreed and at both hearings, the tenant and the landlord's lawyer agreed that MPA pays a portion of the tenant's rent to the landlord, on behalf of the tenant, for this rental unit and tenancy, as a rent subsidy. At the second hearing, the tenant took issue with this description, but I find it necessary to include same to explain and clarify this settlement agreement. The above direct payment agreement has been made, from the landlord to MPA, not the tenant.

I do not issue a monetary order to MPA, as they are a third party, that did not attend both hearings, and they are not a party named in this application. The full legal name of MPA, which was confirmed by both parties during the second hearing, is indicated on the cover page of this decision.

Conclusion

I order both parties to comply with all of the above settlement terms.

The tenant's application for a monetary order of \$7,000.00 for compensation for damage and loss under the *Act, Residential Tenancy Regulation* or tenancy agreement, is severed and dismissed with 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 28, 2023

Residential Tenancy Branch