



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (L): MNRL-S, MNDL-S, MNDCL-S, FFL
(T); MNDCT, MNSD, FFT

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for unpaid rent and/or utilities under section 26 of the Act;
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act;
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- authorization to retain the Tenant's security deposit in partial satisfaction of any Monetary Order; and,
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act.

This hearing also concerned the Tenant's Application for Dispute Resolution under the Act for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- a Monetary Order for return of the Tenant's security deposit under section 38; and,
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord or the Tenant entitled to recover the filing fee for this application from the Other Party?

Background and Evidence

I have reviewed the evidence, and have considered the testimony of the parties, but will refer only to what I find relevant to my decision.

Based upon the tenancy agreements submitted into evidence, as well as copies of canceled rent checks provided by the Tenant, I find the tenancy began on September 1, 2021. From September 1, 2021 through and including August 1, 2022, the monthly rent was \$4,000.00 due on the first day of the month. On September 1, 2022 through to and including August 1, 2023, the Tenant's monthly rent was \$4,800.00, based upon the cancelled checks submitted by the Tenant. The Tenant submitted in evidence a copy of a tenancy agreement signed by the parties for the term September 1, 2021 through August 31, 2022, with monthly rent in the amount of \$4,000.00 due on the first day of the month. Additionally, the agreement provides Tenant provided a security deposit to the Landlord in the amount of \$2,000.00 on June 23, 2021.

The Landlord submitted two tenancy agreements signed by the parties: for the period March 1, 2022 to February 28, 2023 with monthly rent in the amount of \$4,800.00; and, for the period September 1, 2022 to August 31, 2023, with a monthly rent of \$4,800.00. Rent under both tenancy agreements was due on the first day of the month. Both tenancy agreements recite that the Tenant had provided the Landlord a \$2,000.00 security deposit on February 28, 2022. The Tenant testified that she had paid a security deposit of \$2,100.00 in 2019 but no documentation was provided to substantiate the

Tenant's position. A copy of each tenancy agreement was provided in evidence. The Landlord testified that she continues to hold the Tenant's security deposit in trust.

On July 15, 2023, the parties signed a Mutual End of Tenancy with an effective date of September 15, 2023. A copy of the agreed-upon end of tenancy form signed by both Landlord and Tenant was provided in evidence. The Tenant stated that she vacated the rental unit on September 9, 2023. The Tenant stated that she spoke with the Landlord that day and provided her forwarding address to the Landlord.

On September 27, 2023, the Landlord applied for an order of possession and a monetary order for unpaid rent owing for September, 2023, by direct request to the RTB (file number for application appearing on cover page to this Decision). The Landlord's request was premised upon a 10 Day Notice issued by the Landlord to the Tenant on September 15, 2023, also with an effective date of September 15, 2023. The Notice issued by the Landlord provided that the unpaid rent due as of September 1, 2023, was \$4,800.00. Although the Landlord stated on the Notice that the Tenant had been served by posting on the rental unit door and serving a copy in person to the Tenant, the Tenant testified that she was unaware of the Notice or the prior RTB proceeding.

As a result of the Landlord's direct request application, a two day order of possession was issued to the Landlord on October 16, 2023, as well as a monetary order in the amount of \$4,900.00 for unpaid rent due September 1, 2023, in the amount of \$4,800.00 plus \$100.00 reimbursement for the filing fee.

The Landlord retained the services of a bailiff on or about October 23, 2023, to enforce the order of possession. The Landlord was also successful in having the bailiff seize \$5,989.59 from the Tenant's bank account on November 28, 2023. The Tenant provided a copy of the seizure notice from her banking institution. The Tenant testified that there was an occupant residing in the rental unit (D.S.) at the time she vacated the house and testified that D.S. was present in the rental unit with the Landlord's consent.

When the Tenant moved in, the Landlord stated that a move-in inspection was not done with the Tenant and no condition inspection report was prepared. At the time the bailiff removed the occupant from the rental unit on October 23, 2023, the Landlord on her own completed a move-out inspection report. A copy of that report was submitted in evidence. The Tenant testified that she was to have met with the Landlord on September 15, 2023, to conduct a walk-through inspection but the Landlord did not attend for an inspection at the designated time on that date. The Tenant further testified that she was present when the Landlord conducted the walk-through inspection after

the bailiff had removed the occupant D.S., but that the Landlord would not permit her to sign the inspection report as “she had been evicted.”

The Landlord filed this application requesting:

- unpaid rent for October 2023 - \$4,800.00
- bailiff fees regarding the order of possession - \$1,972.38
- court fees - \$120.00
- cleaning the rental unit - \$700.00 (receipt provided)
- cleaning the yard - \$997.50 (receipt provided)
- new locks (estimate) – 492.92 Chinese yen
- carpet replacement (estimate) - \$1,591.50
- refrigerator replacement (estimate) - \$899.99
- restoration of a powder room (estimate) - \$4,600.00
- portable heater - \$180.26 (receipt provided)

The Tenant stated that the renovations to the powder room (the addition of a shower) was done by her at the request of the Landlord at the commencement of the tenancy. Additionally, the Tenant stated that the refrigerator that was removed (there were two in the unit) was her personal property and not the Landlord's. The Tenant denied that the carpet required replacement and provided in evidence a receipt for carpet cleaning done on September 9, 2023. The Tenant denied that she was liable for the condition of the rental unit (interior or yard) as she had left on September 9, 2023, and that it was the responsibility of the occupant D.S.

The Tenant's application requested reimbursement for the increased rent she paid that the Landlord charged in excess of the limit permitted under the Act and regulations. The Tenant also requested the return of her security deposit.

Analysis

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the evidence before me, I find the Landlord has not provided sufficient evidence to establish a claim against the Tenant for unpaid rent for October, 2023.

The Tenant testified that she vacated the rental unit on September 9, 2023. This is corroborated by the carpet cleaning receipt she submitted for that date. Additionally, the Tenant provided a copy of her banking institution's confirmation that the bailiff had seized \$5,989.59, which the Tenant stated was in satisfaction of the monetary order the Landlord obtained for September 2023 rent (as well as bailiff fees and court costs). The Tenant credibly testified that another individual was residing in the rental unit (D.S.) at the time she moved out and that this individual was there with the Landlord's permission.

Therefore, I find the Landlord is not entitled to a Monetary Order for unpaid rent for October 2023 in the amount of \$4,800.00 under section 67 of the Act.

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

And,

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Section 35 of the Act states that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not provided sufficient evidence to establish a claim for damage to the rental unit or common areas for which the Tenant is liable.

Although the Landlord submitted various photographs of the alleged damage to the rental unit, the Landlord did not provide any evidence of the condition of the unit at the commencement of the tenancy. Absent evidence to establish the condition of the rental unit at the start of the tenancy, which is intended to be documented in a move-in condition inspection report, there is no adequate evidence from which to determine that there was damage to the unit, and that the Tenant is responsible for that damage.

Furthermore, I accept the Tenant's testimony that she vacated on September 9, 2023. The parties had entered into an agreement to end the tenancy effective September 15, 2023. There is no evidence submitted by the Landlord to establish that the Tenant, as opposed to D.S., the occupant present in the unit with the Landlord's permission, was the individual removed by the bailiff. Moreover, the Tenant provided evidence from her banking institution that the bailiff, on behalf of the Landlord, seized \$5,989.59 from the Tenant's account, which the Tenant testified was in satisfaction of the monetary issue for unpaid rent issued to the Landlord, bailiff and court fees.

The Landlord has not established with satisfactory evidence that the Landlord the Tenant was in the rental unit after September 9, 2023, and that the Tenant is liable for the bailiff and court fees incurred by the Landlord.

Therefore, the Landlord's application for a monetary order for damage to the rental unit, and reimbursement of court and bailiff fees for enforcement of the order of possession on October 23, 2023, is dismissed, without leave to reapply.

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the Tenant credibly stated that she vacated the rental unit on September 9, 2023, pursuant to a mutual agreement to end the tenancy on September 15, 2023, providing the Landlord with her forwarding address at that time. The Landlord submitted the application on November 6, 2023. I find the Landlord has not timely filed this application within 15 days of the tenancy ending and the Tenant providing the forwarding address on September 9, 2023; or, pursuant to the agreed-upon end of tenancy of September 15, 2023. Again, the Landlord failed to provide any evidence to rebut the Tenant's testimony that the occupant D.S. was present in the rental unit with the permission and consent of the Landlord.

Where, as here, the Landlord does not make a timely application for dispute resolution or return the Tenant's security deposit, as required under section 38(1) of the Act, section 38(6)(b) requires that the Landlord must pay the Tenant double the amount of the security deposit.

The Tenant stated that she had paid the Landlord a security deposit in the amount of \$2,100.00. However, the Tenant did not provide documentary evidence to corroborate her position. The tenancy agreements provided by the Landlord both indicate the Landlord received a security deposit in the amount of \$2,000.00 on June 23, 2021.

I find that the Tenant provided the Landlord a security deposit in the amount of \$2,000.00 and I further find that the Tenant is entitled to double the amount of this security deposit from the Landlord in accordance with section 38. The Tenant's security deposit has now been conclusively dealt with.

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Part 3, section 41 of the Act, states that a landlord must not increase rent except in accordance with sections 42 and 43 of the Act, which only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenants under section 14 of the Act.

From September 1, 2021 through to and including August 1, 2022, the Tenant's established that she paid monthly rent to the Landlord in the amount of \$4,000.00. On September 1, 2022, rent increased to \$4,800.00, and the Tenant submitted evidence of payment (canceled rent cheques issued to the Landlord), through August 1, 2023.

Policy Guideline 37b requires that the landlord provide a Notice of Rent increase to document the voluntary agreement by the tenant:

A Notice of Rent Increase must be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant. A tenant cannot dispute an amount they agreed to in writing. A tenant can dispute an agreed rent increase if it was not imposed in compliance with the timing and notice provisions or if the other conditions of the rent increase were not met.

In this case, the Landlord provided no evidence that she had issued any required Notice of Rent Increase to the Tenant during the term of the tenancy.

Section 42 of the Act provides that a landlord may increase rent only on an annual (12 month) basis. Section 43(1)(a) provides that a rent increase must be, in relevant part, at a rate established by the Regulations. The applicable rent increase limit for 2022 was 1.5%, and for 2023, the rent increase was limited to 2.0%.

Thus, in September 2022, when the Landlord increase the monthly rental rate from \$4,000.00 to \$4,800.00, the allowable limit under the Act and regulations was 1.5% or \$60.00, for the next 12-month period ($\$4,000.00 \times 1.5\% = \60.00). The Tenant thus overpaid rent for the period September 1, 2022 to August 1, 2023, by \$740.00 ($\$4,800.00 - \text{actual rent} - \text{less} - \$4,060.00 - \text{allowable rent increase} = \740.00). Over the 12-month period, the Tenant overpaid to the Landlord rent in the amount of \$8,880.00. The tenancy ended thereafter.

I find the Tenant has provided sufficient evidence to establish a claim for a monetary order for reimbursement of a rent increase assessed by the Landlord in violation of the Act and regulations in the amount of \$8,880.00.

I decline to reimburse the Tenant for any unauthorized amount of rent assessed and paid to the Landlord for September 1, 2023, as this was the subject of a previous monetary order.

For the above reasons, the Tenant's application for an order regarding the tenant's dispute of a rent increase by the landlord under section 41 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

As the Landlord was not successful in her application, I find the Landlord is not entitled to recover the \$100.00 filing fee paid for her application for dispute resolution under section 72 of the Act.

As the Tenant was successful in her cross-application, I find the Tenant is entitled to recover the \$100.00 filing fee paid for her application under section 72 of the Act.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

I grant the Tenant a Monetary Order in the amount of **\$13,031.85** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for double the security deposit ($\$2,000.00 \times 2$) under section 38(6)	\$4,000.00
Interest on the initial security deposit only	\$51,85

a Monetary Order for reimbursement to Tenant for unauthorized rent increase assessed by Landlord under section 42	\$8,880.00
authorization to recover the filing fee for this application from the landlord under section 72 of the Act	\$100.00
Total Amount	\$13,031.85

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 25, 2024

Residential Tenancy Branch