

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's August 6, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord filed a cross-application on September 28, 2024, requesting:

- unpaid rent for October 2023, \$3,561.29, (pro-rated)
- bailiff fees for the writ of possession enforced October 23, 2023, \$2,100.00
- court fees, \$120.00
- filing fee, \$100.00

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find both parties were duly served. Both parties were fully aware of the application and evidence presented by the other. Neither party disputed service of the Proceeding Package although they had opportunity to do so.

The Tenant provide evidence that they served their Proceeding Package to the Landlord by registered mail in accordance with section 89(1) of the Act.

The Landlord provided evidence that they served their Proceeding Package to the Tenant in person with a witness, in accordance with section 89(1) of the Act.

### **Preliminary Matters**

This decision should be read together with the decision and review consideration decision written by my colleague arbitrator on March 25, 2024, and July 14, 2024, respectively. The file numbers are noted on the cover page of this decision.

Under section 64(3)(c) of the Act, I amend the application to reflect the names of both Landlords as indicated by the tenancy agreement.

## **Issues to be Decided**

Is the Tenant entitled to compensation under section 67 of the Act for a disputed rent increase?

Is the Landlord entitled to a monetary order for unpaid rent and compensation for bailiff and court fees under section 67 of the Act?

Is either party entitled to recover their filing fee?

## **Facts and Analysis**

Based on a review of the previous decisions and evidence in this matter, I find as follows:

- The Tenant's application for monetary compensation based on a dispute of a rent increase was granted on March 25, 2024, and then set aside on July 14, 2024, because the arbitrator found the Tenant had not served their application and evidence to the Landlord in accordance with the Act. This monetary claim was dismissed, with leave to reapply. That is the application before me today from the Tenant.
- The Landlord's application for unpaid rent and monetary damages was dismissed on March 25, 2024, and the dismissal was affirmed in the review consideration decision of July 14, 2024. I find the Landlord's application before me today is the same application that was previously dismissed, without leave to reapply.

## **Analysis**

### **Is the Tenant entitled to compensation under section 67 of the Act for a disputed rent increase?**

The parties each provided a copy of a tenancy agreement signed by the parties on February 25, 2022, for a monthly rent of \$4,800.00.

The copy provided by the Tenant indicated a start date of September 1, 2022, for a fixed term ending August 31, 2023.

The copy provided by the Landlord indicated a start date of March 1, 2022, for a fixed term ending February 28, 2023.

Under Policy Guideline 30, a rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. For clarity, a tenant signing a subsequent

fixed term tenancy agreement does not constitute a written agreement to increase rent above the maximum annual allowable amount. The tenant's written agreement must specifically state that they agree to a rent increase above the maximum annual allowable amount. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must be given three full months' notice of the increase.

Under section 47(3) of the Act, a notice of a rent increase must be in the approved form. While the signed tenancy agreement is sufficient to indicate the Tenant's written agreement to the rent increase, I find the Landlord has not presented any evidence that they issued a notice of rent increase in the approved form.

The Tenant provided evidence that they paid rent of \$4,000.00 for August 2022 and \$4,800.00 for September 2022. The Tenant claims the overpayment of rent for 12 months from September 2022 to September 2023.

I find the Tenant overpaid rent for the period September 1, 2022, to August 1, 2023, by \$740.00 per month, ( $\$4,800.00 - \text{actual rent} - \text{less- } \$4,060.00 - \text{allowable rent increase} = \$740.00$ ). Over the 12-month period, the Tenant overpaid to the Landlord rent in the amount of \$8,880.00.

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.

Under section 67 of the Act, I grant the Tenant a monetary order for \$8,880.00 for their dispute of a rent increase.

**Is the Landlord entitled to a monetary order for unpaid rent and compensation for bailiff and court fees under section 67 of the Act?**

The principle of res judicata prevents an applicant from pursuing a claim that already has been decided and prevents a respondent from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that issue was contested and decided in the first action.

I find the Landlord presented the same evidence as they provided with their original application, to reargue a claim that was previously dismissed without leave to reapply.

Therefore, I dismiss the Landlord's claim on the basis of res judicata.

**Is either party entitled to recover their filing fee?**

I decline to award the Landlord's filing fees under section 72 of the Act.

I grant the Tenant a monetary order for \$100.00 in respect of their filing fee for this application under section 72 of the Act.

## **Conclusion**

I dismiss the Landlord's application in its entirety, without leave to reapply.

I grant the Tenant a monetary order for **\$8,980.00** for the return of their overpayment of rent and for their filing fee for the application. The Tenant is provided with this Order on 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, it 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 Act.

Dated: October 21, 2024

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Residential Tenancy Branch