Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S, MNRL-S, FFL
Tenant: MNDCT, MNSD, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- $19,991.90 compensation for damage caused by the tenant, their pets or guests to the unit, site or property – claiming against the pet and security deposits;
- $112.00 in unpaid utilities owing; and
- Recovery of the $100.00 application filing fee.

The Tenant filed a claim for:

- $3,900.00 compensation for monetary loss or other money owed in the form of a refund of an illegal rent increase;
- The return of double the security and pet damage deposits in the amount of $3,600.00;
- Emotional distress; and
- Recovery of the $100.00 application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Applications for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

At the onset of the hearing, it became apparent that the Landlord had not submitted a Monetary Order Worksheet setting out the full particulars of the dispute, pursuant to sections 59(2)(b) and 59((5)(c) of the Act, and Rule 2.5.

Specifically, the Landlord did not provide a detailed breakdown of the entire claim for $19,991.90, which I find is a very specific amount. In addition, I find that proceeding with the Landlord's claim at this hearing would be prejudicial to the Tenant, as the absence of particulars that set out how the Landlord arrived at the amounts being claimed makes it difficult for the Tenant to adequately prepare a response to the Landlord's claim. I note the Landlord submitted his application on April 24, 2019, which provided significant time for him to comply with section 59 and Rule 2.5; however, the Landlord failed to do so.

Both Parties have the right to a fair hearing and a respondent is entitled to know the full particulars of the claim made against them at the time the applicant submits their application. Given the above, the Landlord is granted liberty to reapply, but is reminded to provide full particulars of his monetary claim.

Accordingly, I dismiss the Landlord's claim wholly, with leave to reapply. I have not considered or made any conclusions about the Landlord's claims; I have considered only the Tenant's claims in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of her $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 15, 2013, with a monthly rent of $1,800.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of $900.00, and a pet damage deposit of $900.00. The Parties agreed that the tenancy ended, because the Landlord wanted to move into the rental unit, which they said is a four-bedroom, three-bathroom house.

Rent Increase

The Tenant submitted a copy of a text exchange between the Parties dated February 1, 2016. The Parties texted the following:

Tenant: Hi [Landlord], just wanted to thank you again for just raising the rent by $100, I think that's very considerate and generous of you.

Landlord: No worries [Tenant], it sucks it needed to go up any at all.

As set out in her Monetary Work Sheet, the Tenant claimed to for a $100.00 refund for every month she paid the increased rent, starting in January 1, 2016 through February 2019. The Tenant said the Landlord did not use the proper form nor did he have the Tenant's signature agreeing to the rent increase. The Tenant claimed, as follows:

	Receipt/Estimate From	For	Amount
1	Rent ↑ w/o proper form and w/o T's signature Jan 1/16 to Jan. 1/17	$100.00 x 12	$1,200.00
2	Rent ↑ w/o proper form 2017 to 2018	$100.00 x 12	$1,200.00
3	" " " " 2018 to 2019	$100.00 x 12	$1,200.00
4	" " " Jan & Feb 2019	$100.00	$200.00
		Total monetary order claim	$3,800.00

The Tenant said that the Landlord did not give her three months' notice of the rent increase, as required by the Act.

The Landlord said: “I spoke with [the Tenant] after I found out that she had moved someone else into the property. You can have her not live there or we can increase your rent. We’ll talk about that. I believe it was in February 2015. So she agreed to the fairness of the rent increase. She charged the other person that money. She could have had [the roommate] not live there. There are text message in my evidence package showing that. We talked about it prior to the rent increase; I said I would give her a head’s up - she knew about that well before the increase happened.”

Return of Security and Pet Damage Deposits

The Parties agreed that the Landlord completed a condition inspection report (“CIR”) and texted a copy of it to the Tenant on April 2, 2019. The Landlord submitted a copy of the CIR which was dated June 15, 2013 for the move-in portion of the inspection, and March 31, 2019 for the move-out portion of the inspection. The Tenant signed the move-in portion of the CIR, but not the move-out portion.

The Tenant said that the Landlord arrived at the rental unit to move in on March 31, 2019, at 1:00 p.m. and that “he was very irate”, according to the Tenant. She went on:

> He said, ‘Look at this mess.’ He’s just standing there. I haven’t swept the floor. ‘This house is a mess, mess, mess,’ he said. We go into the master bedroom and there’s a snag on the carpet, a piece of wood on the floor and he goes off on me.
>
> We’re outside and I’m getting upset with him. I’ve been in that house for six years and took care of the lawn, took care of everything. The basement tenants didn’t do anything. I gave him the keys. He didn’t have any inspection notice paper in his hand. He just took me in the house claiming all this dirt and damage. He did not have any papers to do the move-out condition inspection, therefore, I just walked away.

The Landlord said that he had the CIR sitting on the kitchen counter, ready to fill out during the inspection.

The Tenant said that the Landlord texted her to say that he did the walk-through and inspection and that she needed to review the CIR he texted her and get back to him. The Tenant said she told the Landlord “no, he’s already moved in. I got another request for an inspection after he’s been in there for three weeks. That’s why I’m asking for double the $1,800.00 [deposits] back for $3,600.00.”

The Tenant said in the hearing and in her written statement she submitted that she was under “enormous stress and financial difficulty”, since the Landlord did not return her deposits. She said she needed the deposits to help with her rent and other moving expenses.

The Parties agreed that the Tenant provided the Landlord with her forwarding address by sending it to him via registered mail, which the Landlord said he received on April 9, 2019. This is consistent with the Tenant’s documentary evidence that she sent the forwarding address via registered mail on April 4, 2019. The RTB records indicate that the Landlord applied for dispute resolution on April 24, 2019.

Emotional Distress

The Tenant said that the Landlord’s girlfriend moved into the downstairs rental unit, and that she made claims about the Tenant to the Landlord that were not true. The Tenant said the Parties went through arbitration in 2017, based on the girlfriend’s claims, but that these claims were dismissed.

The Tenant said that she has a 33-year old special needs daughter and that the downstairs tenant would turn off the furnace. The Tenant said:

> She would constantly be complaining to [the Landlord] about us. I couldn’t afford to move, but it was very, very difficult to live there with her there, and him not listening to anything I said. I had to go on medication because of this. I can’t be a wreck when I have to take care of my daughter. Nobody should have to live like that thinking, ‘oh is he coming to the door with eviction papers?’

The Tenant did not set out what compensation she was seeking for this claim.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Rent Increase

Rent Increase

Policy Guideline 37 (“PG #37”) addresses rent increases permitted under the Act. PG

#37 states that a tenant's rent cannot be increased unless a tenant has been given proper notice in the approved form (RTB form #7), at least three months before the increase is to take effect. A tenant's rent can only be increased once every 12 months. This is consistent with Part 3 of the Act, including section 43(1), which states that a landlord may impose a rent increase only up to the amount:

> (a) calculated in accordance with the regulations,
> (b) ordered by the director on an application under subsection (3), or
> (c) agreed to by the tenant in writing.

PG #37 also says:

> **D. TENANT MAY AGREE TO A RENT INCREASE GREATER THAN THE MAXIMUM ALLOWABLE PERCENTAGE AMOUNT**
>
> A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. <u>The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase</u>.
>
> The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases4. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.
>
> Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.
>
> [emphasis added]

As set out in section 6 of the Schedule to the Regulation:

> (3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.

> (4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

The allowable rent increase for 2016 was 2.9%. The Landlord was allowed to increase the rent in 2016 by 2.9% of $1,800.00 or $52.20 per month to $1,852.20. Accordingly, when the Landlord increased the rent to $1,900.00, he overcharged the Tenant by $47.80 a month from March 2016 to March 2019.

Based on the evidence before me, I find that it was reasonable for the Landlord to impose a rent increase starting in March 2016; however, the Landlord did not give the Tenant three months' written notice in the approved form and he increased the rent beyond what is allowed by the Regulation. As a result, I find that the rent increase in this situation was invalid.

Section 43(5) of the Act states:

> **43** (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

PG #37 states:

> If a landlord collects an unlawful rent increase, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected. In those circumstances, the landlord may issue a new three month Notice of Rent Increase, as the original notice did not result in an increased rent.

I find that the Tenant's comments in the text message do not amount to signed, written agreement to the rent increase.

If the Landlord wanted to increase the rent above the allowable amount, because of the additional occupant in the rental unit, he could have applied to the RTB for a rent increase in amount greater than the amount calculated under the regulations. However, there is no evidence before me that the Landlord applied as such and received the Director's approval for a higher increase than that allowed by regulation.

	Rent increase	For Time Period	Amount
1	$100 per month	March 2016 to December 2016	$1,000.00
2	$100.00 per month	January 2017 to December 2017	$1,200.00
3	$100.00 per month	January 2018 to December 2018	$1,200.00
4	$100.00 per month	January 2019 to March 2019	$300.00
		Total additional rent paid:	$3,700.00

Based on the above, I find that the Landlord's rent increase imposed on the Tenant was contrary to the Act, Regulation and Policy Guidelines; accordingly, there was no rent increase, so the Landlord overcharged the Tenant by $100.00 per month for 37 months; for a total of $3,700.00. My total differs from that of the Tenant, because she included a rent increase for January and February 2016; however, the evidence before me indicates that the Landlord did not initiate the rent increase until the end of February 2016. As a result, I find that the rent increase began in March 2016. I award the Tenant a monetary order of **$3,700.00** for an illegal rent increase.

Return of Security and Pet Damage Deposits

Section 38 of the Act states:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Tenant provided her forwarding address on April 9, 2019, and that the tenancy ended on March 31, 2019.

The Landlord was required to return the $1,800.00 security and pet damage deposits within fifteen days after April 9, 2019, namely by April 24, 2019, or to apply for dispute resolution at the RTB, claiming against the security deposit, pursuant to Section 38(1).

The evidence before me indicates that the Landlord did not return any amount of the deposits; however, he applied for dispute resolution, claiming against the deposits on April 24, 2019. Therefore, I find the Landlord complied with his obligations under Section 38(1). As a result, the Tenant does not have the right to the return of double the amount of the deposits.

Pursuant to section 35 of the Act, a landlord and tenant must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Subsection 35(2) requires a landlord to offer a tenant "at least two opportunities, as prescribed, for the inspection." "As prescribed" means as prescribed by regulation. Section 17(1) of the Regulation states that a landlord must offer a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. Section 17(2) of the Regulation states that if the tenant is not available at the time offered for the first opportunity, that the landlord must propose a second opportunity to the tenant "by providing the tenant with a notice in the approved form."

In the case before me, I find it is more likely than not that the Tenant agreed to do the outgoing condition inspection of the rental unit on the day she was to move out. Given that the Landlord provided evidence that he used a CIR when the Tenant moved in, I find it more likely than not that he had the CIR ready to complete during the move-out inspection of the condition of the rental unit.

As a result, I find that the Landlord complied with the Act and Regulation in this set of circumstances, so I find that the Landlord did not extinguish his right to claim against the deposits under the Act.

However, given that I have dismissed the Landlord's Application, in which he made a claim against the security and pet damage deposits, I find that the Landlord must immediately return the $1,800.00 owing to the Tenant for these deposits. The Landlord is at liberty to apply for compensation for damage or other money owing from the Tenant, but he will not have the deposits against which to make his claim.

Emotional Distress

I appreciate that the Tenant's evidence indicates that she experienced difficulties with another tenant in the residential property; however, the Tenant did not make a specific claim for compensation in this regard, nor did she set out an authority under the Act, regulation or tenancy agreement allowing me to grant such an order.

A party who applies for compensation against another party has the burden of proving their claim. Policy Guideline 16 sets out a four part test that an applicant must prove in establishing a monetary claim. In your case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

I find that the Tenant's evidence does not prove on a balance of probabilities any of the steps of the Test for this part of her claim. Therefore, I dismiss this claim without leave to reapply.

The Landlord's application for compensation under the Act, regulation and tenancy agreement was dismissed in full for providing an insufficiently detailed breakdown of the entire claim for $19,991.90. However, the Landlord's claim is dismissed with leave to reapply.

I have awarded the Tenant a monetary order of **$3,700.00** against the Landlord for an illegal rent increase. I have also found that the Landlord owes the Tenant **$1,800.00** for return of the security and pet damage deposits, so I award her recovery of this amount. The Tenant was unsuccessful in her claim for double the deposits, because the Landlord complied with the requirements of section 38(1) of the Act. The Tenant was unsuccessful in establishing a basis for her claim in emotional distress, so I dismissed this without leave to reapply.

Given that her application was predominantly successful, I grant the Tenant recovery of her $100.00 application filing fee. I award the Tenant a total monetary order of **$5,600.00**.

Conclusion

The Landlord's application was dismissed with leave to reapply, pursuant to sections 59(5)(c) and 59(2)(b) of the Act, for not including full particulars of his monetary claim. The Landlord is at liberty to reapply for with a monetary claim; however, he is encouraged to provide a thorough, detailed breakdown of any future monetary claim with his application, in accordance with Rule 2.5. This decision does not extend any applicable timelines under the Act.

The Tenant was successful in proving on a balance of probabilities that the Landlord imposed an illegal rent increase, and as a result, the Tenant is awarded $3,700.00 in recovery of the excess amount paid from March 2016 through to March 2019.

The Tenant was successful in establishing that the Landlord owes her $1,800.00 in the return of her security and pet damage deposits, but she was unsuccessful in being awarded double that amount, because the Landlord did not violate section 38(1) of the Act. The Tenant is also awarded recovery of the $100.00 application filing fee. The Tenant is granted a total monetary order of **$5,600.00** from the Landlord

This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the Parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 2, 2019

Residential Tenancy Branch