



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD OLC

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a return of their security deposit, and a monetary order for two allegedly illegal rent increases. The Tenants claim a total of \$4,390.00 in monetary compensation.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord required to return the security deposit to the Tenants?

Did the Landlord charge an illegal rent increase?

Background and Evidence

This was the third hearing involving these parties. Earlier hearings dealt with the end of the tenancy (files 724114 & 724258), and a damages claim made by the Landlord (file 727901).

The tenancy began on March 1, 2004. The Tenants paid a security deposit of \$525.00 on February 24, 2004. At the outset of the tenancy the rent was

established at \$1,050.00. The tenancy ended September 30, 2008. At the end of the tenancy the rent was \$1,400.00, in effect for only one month.

There were no condition inspection reports done in accordance to the Act by the Landlord.

The Landlord did not provide Notice of Rent Increases to the Tenants in accordance with the Act.

The Tenants were served with the Landlord's Application for Dispute Resolution at their new address, and further they wrote to him to request a return of the security deposit. They did not receive their security deposit back, and in the previous hearings described above, no order was made in respect of the security deposit. Given the exchange of addresses through the Application procedures, I find the Landlord had the forwarding address of the Tenants.

The parties agree that in April of 2007, the Landlord raised the rent to \$1,215.00. The evidence indicates the Landlord changed the amount of rent payable on the tenancy agreement, and initialled the increase. The Tenants did not sign or initial this change.

The parties further agree that in August of 2008, the Landlord again raised the rent by changing the amount in the tenancy agreement, to \$1,400.00. The Tenants did not sign or initial this change.

The Tenants claim that at the time of the above described increases the Landlord told them to pay the new amount or move out.

The Tenants request the return of double the security deposit pursuant to section 38 of the Act.

The Tenants also request a recovery of the illegal rent increase pursuant to section 43 of the Act.

The Landlord explained he did not have much experience with the business of renting properties. He testified that he raised the rents because his costs were increasing. When cross examined, he was not aware of the provisions in the Act dealing with rent increases.

He also testified that he thought the rent increases were approved by the Tenants because they did not complain about the additional amounts to be paid. The Landlord also testified that the Tenants had damaged portions of his property and he should be compensated by the Tenants for this.

Analysis

Based on the evidence, testimony and a balance of probabilities, I find as follows:

I find that the Landlord must pay double the security deposit to the Tenants plus interest on the original amount held. The Landlord did not return the security deposit and was unsuccessful in his two claims regarding damages to the rental unit. In particular, the Dispute Resolution Officer in file 727901 dismissed nearly all of the damages claims made by the Landlord as there was insufficient or no evidence to support most of his claim that the Tenants damaged the rental unit. Furthermore, and most importantly, these matters have already been determined at past hearings, and I have no authority to vary or alter those decisions.

The Landlord failed to deal with the security deposit as required under the Act, in particular by failing to do condition inspection reports or by returning the security deposit within the required time frame. I order the Landlord to pay the Tenants **\$1,068.59**, comprised of double the security deposit of \$525.00, plus the interest on the original amount held of \$18.59.

In regard to the overpayment of rent, the Act and regulation set out a statutory limit on the amount of rent increases a landlord may impose. The Act also allows a tenant to recover an illegal increase of rent that has been paid, under section 43.

The Act allowed a rent increase of 4% in 2007, and 3.7% in 2008.

In 2007, a 4% increase of \$1,050.00 would be \$42.00, or an allowable increase to \$1,092.00. The Landlord here increased the rent to \$1,215.00.

I find the first rent increase was illegal. This also leads to the finding that the Landlord could not have given a second increase based on this amount either, as it was an illegal increase to start with. I find the second increase in rent was also illegal.

The Landlord also failed to follow the required Notice to Increase rent provisions of the Act. Therefore, the Landlord is not entitled to any rent increase from the initial amount set in the tenancy agreement. I order the Landlord to repay the rent increases to the Tenants in the amount of **\$2,825.00**, comprised of the difference in rent of \$165 for 15 months (April 2007 to July 2008), and the difference in rent of \$350.00 for one month (August 2008).

Conclusion

I find that the Tenants have been successful in their claim and order the Landlord to pay the Tenants the sum of **\$3,943.59**, comprised of the above described monetary awards, plus the \$50.00 filing fee for this Application.

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail

to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The Landlord has breached the Act and the testimony and evidence show the Landlord is not aware of substantial portions of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies. I am providing the Landlord with a brochure with information on Residential Tenancies and advise the Landlord to read it to avoid future breaches.