



Dispute Resolution Services

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

Decision

Dispute Codes: DRI, MNSD, FF

Introduction

This hearing dealt with an application from the tenant to dispute a rent increase, for a monetary order for return of the security deposit, and recovery of the filing fee for this application. The tenant participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issues to be Decided

- Whether the tenant is entitled to dispute a rent increase, and a monetary order under the Act

Background and Evidence

Pursuant to a hand-written residential tenancy agreement, the month-to-month tenancy began on March 5, 2007. Rent in the amount of \$695.00 was payable in advance on the first day of each month, and a security deposit of \$347.50 was collected at the start of tenancy.

By way of hand-written note to the tenant dated January 1, 2008, the landlord provided the tenant with notice of a rent increase in the amount of \$35.00 effective from May 1, 2008. This served to raise the rent from \$695.00 per month to \$730.00 per month. The tenant testified that she paid this increased rent for the six month period from May 1, 2008 through to October 31, 2008.

The tenant stated she provided the landlord with one month's written notice of her intent to vacate the unit by October 31, 2008. The tenant also testified that at the end of tenancy the landlord inspected the unit with her and reported that everything seemed fine. At that time the landlord also informed the tenant that her security deposit would be returned to her by mail at the forwarding address provided to the landlord by the tenant in writing.

Subsequently, the tenant received a cheque from the landlord in the amount of \$30.44 which, to date, she has undertaken not to cash. This amount represents the security deposit of \$347.50 plus interest of \$5.50 (total: \$353.00), minus costs deducted by the landlord in the amount of \$322.56. The tenant testified that there were no discussions with the landlord about deductions from the security deposit, that she did not authorize the landlord to make any deductions, and she disputes that any of the costs itemized by the landlord in association with the deductions are fairly hers. These costs are set out by the landlord in handwriting on a Purchase Order form as follows:

Change the bathroom sink (whole unit) (parts & labour)	\$168.00
Clean the bathroom and fix the closet door	\$70.00
Replace 1 second-hand single bed	\$50.00
	<u>\$288.00</u>
GST	\$14.40
PST	<u>\$20.16</u>
Total	\$322.56

Analysis

Part 3 of the Act speaks to **What Rent Increases Are Allowed**, as follows:

Section 40 Meaning of "rent increase"

Section 41 Rent increases

Section 42 Timing and notice of rent increases

Section 43 Amount of rent increase

Pursuant to the Regulations to the Residential Tenancy Act the amount of rent increase allowable during the period in question is 3.7%. Accordingly, for rent of \$695.00 the allowable increase of 3.7% is \$25.71, which would bring the rent to \$720.71. In the result, the landlord overcharged the tenant during each month of the six month period from May to October 2008 in the amount of \$9.29 (\$730.00 - \$720.71). I find, therefore, that the tenant is entitled to a reimbursement of rent in the amount of \$55.74 (\$9.29 x 6).

Division 5 of the Act speaks to **At the End of a Tenancy**. In particular, section 38 of the Act addresses **Return of security deposit and pet damage deposit** and states, in part:

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.

Section 38(4) provides that a landlord may retain an amount from a security deposit if “the tenant agrees in writing.”

In the circumstances of this dispute, the landlord did not repay the tenant’s full security deposit, or file for dispute resolution claiming against it. Neither is there any evidence that the tenant provided the landlord with authorization in writing for any deductions to be made from the security deposit.

Following from the above, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In the result, I find the tenant is entitled to double the return of her security deposit plus interest on the original amount of the security deposit.

In summary, where it concerns a monetary order, based on the documentary evidence and undisputed testimony of the tenant, I find that the tenant has established a claim of \$810.33. This is comprised of an overpayment of rent in the amount of \$55.74, double return of security deposit in the total amount of \$695.00, interest on the original amount of the security deposit of \$9.59, and recovery of the \$50.00 filing fee for this application. I therefore grant the tenant a monetary order under section 67 of the Act for \$810.33.

Conclusion

I hereby grant the tenant a monetary order under section 67 of the Act for **\$810.33**.

This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 26, 2009

Dispute Resolution Officer