



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF, O, (DRI), (MNDC)

Introduction

This matter dealt with an application by the Tenant to dispute a rent increase, to recover an overpayment of rent as well as compensation for the Landlord ending the tenancy under s. 49 of the Act. The Tenant also applied to recover her security deposit.

Issues(s) to be Decided

1. Is the Tenant entitled to recover an overpayment of rent?
2. Is the Tenant entitled to compensation under the Act and if so, how much?
3. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This tenancy started on or about October 11, 2006 and ended on May 31, 2009. The Parties' tenancy agreement states that rent is \$950.00 per month however, the Tenant claimed that she and the Landlord agreed she would pay \$925.00 per month if the Tenant paid for maintenance to the washer and dryer. The Tenant said that she did pay \$925.00 per month and in support provided 3 (uncashed) cheques in the amount of \$925.00. The Landlord's agent said she believed that rent was \$950.00 per month and argued that the cheques relied on by the Tenant were returned to her because they had the wrong amount written on them.

The Tenant said she believed she paid a security deposit of \$475.00 or ½ the monthly rent. The Landlord said the Tenant paid a security deposit of \$425.00 as set out in the tenancy agreement. The Tenant said she gave the Landlord her forwarding address in writing on May 9, 2009. The Tenant claimed that she gave the Landlord written authorization to deduct \$100.00 for repairs to a laundry room wall (on the move out condition inspection report) but argued that she should not be bound to this agreement as the Landlord now wished to claim further damages.

The Tenant said that on April 1, 2009, the Landlord served her with a Notice to End Tenancy for Landlord's Use of Property to take effect in 90 days. The Notice was on a form from the Ontario Landlord and Tenant Board. On May 9, 2009, the Tenant gave the Landlord written notice that she would be moving out on May 31, 2009. The Tenant said she paid for May's rent but did not receive compensation from the Landlord. The

Landlord said she did not know that the Tenant was entitled to compensation under the Act and argued that the Tenant was not entitled to compensation because she gave notice on May 9, 2009 that she was ending the tenancy.

The Tenant also claimed that on August 29, 2008 she received a type written notice from the Landlord advising her that rent would be increased to \$975.00 as of October 1, 2008. The Tenant argued that the Notice was not on an approved form, that it was in excess of the amount permitted under the Act and that she did not receive the required 3 months advance notice.

Analysis

I find that the Parties' written tenancy agreement is the best evidence of the amount paid by the Tenant for the security deposit and accordingly find that she paid \$425.00. Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant.

I find that the Landlord received the Tenant's forwarding address in writing on May 9, 2009 but did not return her security deposit and did not make an application for dispute resolution to make a claim against the deposit. I also find that the Landlord had the Tenant's written authorization to keep only \$100.00 of the security deposit. As a result, pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit the Tenant did not authorize her to keep plus accrued interest. I find that the Tenant authorized the Landlord to keep \$100.00 from the security deposit for damages to the laundry room wall and is not entitled to recover that amount.

Section 42(3) of the Act says that a notice of rent increase must be in the approved form. I find that the Landlord's notice of rent increase dated August 29, 2008 is not in the approved form and is therefore of no force and effect. The Tenant argued that prior to the notice of rent increase she was paying \$925.00 per month. The Landlord's agent said she believed the Tenant was paying \$950.00 and suggested that was why the Landlord returned 3 cheques to the Tenant. The Tenant argued that the Landlord asked her to replace 3 cheques dated October 1, November 1 and December 1, 2008 because they were in the usual amount of \$925.00 instead of the new rent amount of \$975.00. Both parties provided a copy of a letter from the Landlord dated August 29, 2008 which stated "I would appreciate updated post-dated cheques."



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

I find on a balance of probabilities that rent was \$925.00 per month up to September 30, 2008 and was increased to \$975.00 for the period October 1, 2008 to May 31, 2009. Consequently, I find pursuant to s. 43(5) of the Act that the Tenant is entitled to recover overpayments of \$50.00 per month for 8 months or \$400.00.

Section 51 of the Act states that if a Landlord gives a Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property, the Landlord must give the Tenant their last month of rent free and if the Tenant has already paid the rent, then the Landlord must refund that payment. Section 51 of the Act also says that a Tenant may give the Landlord written notice she wishes to end the tenancy earlier and in that case, the Landlord must pay the Tenant compensation equivalent to one month's rent.

I find that although the Landlord's Two Month Notice was on an Ontario Landlord and Tenant Board form, it substantially complies with the Act and as a result, the Landlord must compensate the Tenant for her last month of rent in the amount of \$925.00. As the Tenant has been successful in this matter, I also find that she is entitled to recover her \$50.00 filing fee for this proceeding. In summary, I find that the Tenant is entitled to a monetary order as follows:

Double unauthorized portion	
Of the Security Deposit:	\$650.00
Accrued Interest (on \$425.00):	\$13.35
Overpayment of Rent:	\$400.00
S. 51 Compensation:	<u>\$925.00</u>
TOTAL:	\$1,988.35

Conclusion

A monetary order in the amount of **\$1,988.35** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 10, 2009.

Dispute Resolution Officer