



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to dispute an additional rent increase, for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee. The tenant also applied for the return of double her security deposit.

The tenant served the landlord by registered mail on July 07, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is there an additional rent increase over the allowable amount for 2009?
- Is the tenant entitled to recover her security deposit if so should this amount be doubled?
- Is the tenant entitled to recover her filing fee for this application?

Background and Evidence

This tenancy started on July 01, 1997 and ended when the tenant gave notice to move from the basement suite on April 30, 2009. Rent for this suite was \$800.00 per month at the end of the tenancy. The tenant paid a security deposit of \$300.00 on June 27, 1997. The tenant gave her forwarding address to the landlords in writing on April 28, 2009.

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The tenant testifies that the landlords have not returned the security deposit to her within 15 days of receiving her forwarding address. The tenant seeks that this amount is doubled pursuant to s. 38 of the Act.

The tenant states that the landlords took over her tenancy when they purchased the property in December, 2007. In August, 2008 the landlords increased the rent from \$590.00 to \$612.48. Around September, 2009 the landlord requested another rent increase from \$612.48 to \$800.00. The tenant initially disputed this amount but was told by the landlords that if she did not pay then they would have to give her a three months notice to end the tenancy as they would have to move into the basement suite and rent out the upper floor of the property. As the tenant did not want to move she reluctantly paid the increase starting on October 01, 2008.

The landlords testify that the tenant was playing under the market rate for the basement suite. She was offered the option of moving after three months notice or to pay the additional amount which she agreed to pay. The landlord testifies that they did not get along with the tenant and felt uncomfortable in their home. After the tenant moved from the suite in April, 2009 the landlords confirmed they re-advertised it and rent it now for \$950.00.

Analysis

I find that the landlord did receive the tenants forwarding address in writing on April 28, 2009. The *Residential Tenancy Act* s.38 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;

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(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(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.

I find in favor of the tenants claim for the return of double her security deposit. The landlord has received the tenants forwarding address and has not returned the security deposit nor filed an application to retain the deposit. Therefore as stated in s.38 of the *Act* the tenant is entitled to receive double the original amount back.

As to the additional rent increase, s. 42 of the *Act* states:

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *Act*.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

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(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) 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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(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.

I find the tenant did agree verbally to pay the additional increase from \$612.48 to \$800.00 in order to stay in her rental suite. However, the tenant did not agree to this rent increase in writing and this was the second increase in two months in 2008. I find the tenant only agreed to this increase under duress of having to move from her home. I find the landlords did comply with the Act when they increased the rent in August 2008 but did not comply with the Act with regard to giving the tenant



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written notice of the rent increase and as to the amount of the increase in September 2009. I also find the landlords did not apply for Dispute Resolution for an Order to allow them to increase the rent above the allowable amount. Therefore, I find the tenant is entitled to recover the over payment of rent from October 01, 2008 to April 30, 2009 at an amount of \$187.52 per month.

As the tenant has been successful in this matter she is entitled to recover her filing fee for this application from the landlords. A Monetary Order has been issued for the following amount.

Double the security deposit	\$600.00
Over Payment of rent for seven months	\$1,312.64
Filing fee	\$50.00
Total amount due to the tenant	\$2,001.81

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,001.81**. The order must be served on the landlord and is enforceable through the Provincial Court 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: October 19, 2009.

Dispute Resolution Officer