



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, to recover the security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on June 20, 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 the tenant entitled to compensation for damage or loss under the act and if so how much?
- Is the tenant entitled to receive double the security deposit back?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on May 01, 2007 and ended on May 30, 2009. Rent for this basement suite started at \$650.00 and had risen to \$725.00 by May 01, 2008 after the tenant received a letter

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from the landlord requesting a rent increase. The tenant paid a security deposit of \$325.00 on April 02, 2007. No move in or move out condition inspections were carried out. The tenant gave the landlord her forwarding address on May 30, 2009.

The tenant testifies that she received a letter from the landlord on January 31, 2008 notifying her that the rent would increase from \$650.00 to \$725.00 on May 01, 2008. The tenant claims she was unhappy about this increase but did not want to move out so she reluctantly paid it for the next year. In 2009 the landlord again attempted to raise the rent and the tenant gave her notice to end the tenancy. The tenant claims that when she moved from the suite the landlord came to have a look around and stated that it was fine but not as clean as when the tenant moved in. The tenant gave the landlord her forwarding address and returned the keys. The tenant testifies that at no time did the landlord do a move in or move out condition inspection and the tenant did not agree that the landlord could keep any of her security deposit. The tenant states she is happy to reimburse the landlord for the carpet cleaning. The tenant states that the landlord claims her mother was living with her at her suite. She states that this was not the case her mother used to come to stay with her for extended periods. The tenant has agreed to pay the landlord \$25.00 per month for the seven months the tenants' mother was staying with her in 2008 and 2009 to help towards any additional utility costs.

The landlord claims the tenant damaged her fence with her car and did not inform her about this. This claim is now going through ICBC. The landlord claims the tenant caused other damage to the suite and property. She testifies the tenant left oil stains on the driveway, the carpets were not cleaned at the end of the tenancy, the tenant had another person living with her (her mother) for extended periods, some cabinets required repair, light bulb replacement and general cleaning of the suite. The landlord claims the tenant owes her one months rent in lost revenue.

The landlord testifies she attempted to resolve these issues with the tenant without arbitration as this failed she decided to keep the tenants security deposit in partial payment of her costs. She did not apply for dispute resolution to keep the security deposit. The landlord claims the tenant agreed to pay the rent increase.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In the first matter regarding the rent increase from May 01, 2008 to May 30, 2009, I find the landlord has not complied with sections 42(3) and 43(1)(a). The landlord did not use an approved form for the rent increase and the rent increase was above the allowable amount for 2008/09. The allowable amount for this period is 3.7%. A landlord must apply for Dispute Resolution if she wants to increase the rent above the amount calculated under the regulations. Therefore, I find the landlord could have increased the tenants rent by \$24.05 not by the \$75.00 she did pay. I uphold the tenants' application for the return of all overpaid amounts to the sum of \$611.40 (\$50.95 X12).

With regards to the second matter concerning the tenants security deposit I find the landlord did not comply with sections 23 and 35 of the Act regarding both the move in and move out condition inspections. The landlord extinguishes her right to retain the tenants' security deposit for damages if she has not complied with either of the above sections of the act. Therefore, I find the landlord must return the tenants security deposit. As the tenant gave the landlord her forwarding address on May 30, 2009 the landlord had 15 days to return the tenants security deposit or pursuant to section 38 (6)(b) she must pay the tenant double the amount of the security deposit. I find the tenant is entitled to recover the amount of \$650.00 from the landlord.

The tenant has agreed that the landlord may retain \$89.00 for the cost of cleaning the carpets and she has also agreed that the landlord may retain a sum of \$175.00 to help towards any additional utility costs when the tenants' mother stayed for extended periods. These amounts will be deducted from the balance.

As the tenant has been successful with her application she is also entitled to recover the \$50.00 filing fee from the landlord pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount.



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Double the security deposit	\$650.00
Overpayment of rent	\$611.40
Filing fee	\$50.00
Less carpet cleaning and sum agreed for tenants mothers visits	(-\$264.00)
Total amount due to the tenant	\$1055.99

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 **\$1055.99**. The order must be served on the respondent 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 30, 2009.

Dispute Resolution Officer