

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

The tenants' Application for Dispute Resolution names the landlord's company name as one of the parties. The landlord noted the company is unrelated to his rental business and the tenant confirmed she never knew the company to be the landlord. As such, the tenant's application was amended to exclude the landlord's company as a party.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation under the *Residential Tenancy Act (Act)*; for interest owed from a security deposit; to recover a rent increase that is not compliant with the *Act*; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 43, 49, 51, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on March 7, 2010 as a month to month tenancy for a monthly rent of \$1,150.00 due on the 1st of the month with a security deposit of \$575.00 paid on February 12, 2007. The rent was increased on June 1, 2008 to \$1,200.00 and remained at that amount until the end of the tenancy. The tenancy ended at the end of June, 2009.

The tenant submitted the following documents into evidence:

- A summary of events, dated January 18, 2010;
- Internet listing of the dispute address for sale;
- Several printed internet pages showing the dispute address for rent, dated November 2, 2009;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2010 with an effective date of June 1, 2010, not listing any reason to end the tenancy;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2010 with an effective date of June 1, 2010, citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;

- A copy of a Notice of Rent Increase dated February 28, 2008 with an effective rent increase date of June 1, 2008 showing the rent at the time of the notice of \$1,150.00 per month and a rent increase of \$50.00 bringing rent to \$1,200.00 per month;
- A copy of a handwritten letter from the tenant to the landlord with the tenant's forwarding address with a notation that the letter was handed to the landlord at 9:13 p.m. on July 13, 2009;
- A copy of a receipt for the security deposit payment from the tenant to the landlord on February 12, 2007;
- A copy of a document entitled "Information for Vacating Tenants" listing charges that would be made against the client for failing to leave the rental unit cleaned; and
- A copy of a move in condition inspection report completed February 26, 2007.

The landlord has submitted the following additional documentation:

- A summary of events;
- A copy of a multiple listing contract signed by the landlord on April 17, 2009 listing the landlord's home property for sale from April 20, 2009 to September 20, 2009;
- A copy of a cheque from the landlord to the tenant dated June 15, 2009 for return of the security deposit in the amount of \$575.00;
- A copy of an invoice/receipt dated July 18, 2009 for drywall services in the amount of \$750.00;
- A copy of a statement and receipts dated September 22, 2009 from a carpet supplier in the amount of \$4,496.69;
- A copy of a document entitled "Affidavit of Witness Statement" with signatures from a number of people who verify the flooring required replacement in the rental unit due to urination from pets during the tenancy.

The landlord testified that he had intended to sell his own residence and move into the dispute address and therefore issued the 2 Month Notice to End Tenancy. He further stated that he had listed his home with a realtor but was unsuccessful in selling the property.

The landlord also noted that during the time after the tenancy he had to repair several things in the rental unit including changing the carpets due to the smell of animal urination from the tenant's pets.

The landlord noted that when he could not sell his home and once the repairs and renovations were complete he put the rental unit back on the rental market but that it was ultimately vacant for 9 months and he ended up selling the rental unit and losing several thousand dollars as a result, including having to make renovations and repairs to the rental unit.

The tenant testified that she had been informed by the tenant in the basement rental unit, who she had befriended during their tenancy, that the landlord was renovating the rental unit and later that it had been

The landlord does not dispute that he failed to provide interest on the return of the security deposit and that he erred on the notice of rent increase issued on February 28, 2008.

Analysis

Section 38 of the *Act* requires a landlord to return, at the end of a tenancy, the security deposit with interest that is calculated in accordance with the regulations. The Residential Tenancy Branch provides on its website the yearly interest rates, as noted in the regulation regarding interest applied to security deposits held by landlords. In addition the Residential Tenancy Branch has a Deposit Interest Calculator on its website to assist landlords and tenants make the appropriate calculation.

As the tenant provided a security deposit to the landlord February 12, 2007 I find the landlord must provide interest in the following amounts:

Period	Annual Rate	Interest
2009	0%	\$0.00
2008	1.50%	\$8.74
2007	1.50%	\$7.63
Total		\$16.37

Section 43 of the *Act* allows a landlord to impose a rent increase up to an amount calculated in accordance with the regulations. The regulations provide a formula to determine a percentage that a landlord may increase rents. In addition the Residential Tenancy Branch publishes on their website the allowable rent increases each year.

In 2008, the posted allowable rent increase was 3.7%. As such, the landlord would be allowed to increase these tenants' rent from \$1,150.00 to \$1,192.55. This resulted in the tenants paying an additional \$7.45 per month for 11 months for a total of \$81.95. I find the landlord must refund this amount to the tenants

Section 51 of the *Act* states that if a landlord issues a 2 Month Notice to End Tenancy for Landlord's Use of Property, in accordance with Section 49, the tenant is entitled to receive an amount equivalent to one months' rent payable under the tenancy agreement. The parties do not dispute the landlord provided this compensation by waiving the rent paid for the last month of the tenancy.

Section 51(2) goes on to say that should the landlord not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date or if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay

the tenant an amount that is equivalent of double the monthly rent payable under the tenancy agreement.

Through the landlord's testimony and evidence, I accept that he did intend to sell his own home and move into the rental unit. However, while Section 49 requires an element of good faith when a landlord ends a tenancy for personal use Section 51 requires that a tenant be compensated when the landlord does not follow through.

While I also accept that the landlord was unable to sell his residential home which then lead to a series of other decisions as to how he would deal with the rental property. I find the landlord had been taking steps that would have allowed him to accomplish the stated purpose and it would have been reasonable for him to later move into the rental unit.

By first putting the rental unit out for potential renters and then to sell the property, I find the landlord has failed to use the property for the stated purpose for at least 6 months and therefore must compensate the tenants in accordance with the *Act* with the equivalent of 2 times \$1,192.55, as determined above to be the rent at the end of the tenancy.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,533.42** comprised of \$16.37 interest owed; \$81.95 overpayment of rent; \$2,385.10 Section 51 compensation and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: July 02, 2010.

Dispute Resolution Officer