



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

DRI, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of rent overpayments made, compensation for damage or loss under the Act, return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing

Issue(s) to be Decided

Has the landlord imposed rent increases in breach of the Act and, if so, is the tenant entitled to compensation for rent overpayments made?

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant has claimed return of the deposit paid, moving costs and return of excess rent payments in the sum of \$1,600.00.

During the hearing the parties agreed to the following facts:

- The tenancy commenced in April 2007;
- No written tenancy agreement or condition inspection reports were completed;

- Rent was initially \$800.00 per month and a \$400.00 deposit was paid;
- Rent increased in December 2008 to \$880.00 per month;
- Rent then increased a further \$20.00 per month to \$900.00;
- The tenancy ended on August 31, 2010, without Notice given by either party, as provided by the Act;
- The landlord received the tenant's written forwarding address on September 14, 2010; and
- That no portion of the deposit has been returned to the tenant.

The landlord testified that rent increased from \$900.00 per month for the last 2 months of the tenancy. The tenant stated that the additional \$20.00 increase was made effective February 2009. Neither party provided any evidence of a Notice of rent increase or any other documentation that agreement was reached in relation to the amount of rent payable; the landlord confirmed that Notice of Rent Increase were not issued. The tenant paid the increases as he did not want his tenancy to end. There was no evidence before me of any written agreement increasing the rent for an additional occupant or for any other reason.

The landlord testified that the tenant requested deductions from the deposit, to be made against rent owed, as follows:

- December 2008 - \$20.00;
- February 2010 - \$180.00; and
- May 2010 - \$30.00.

This reduced the amount of deposit held by the landlord to \$170.00. The tenant denied that any agreement was made allowing these deductions and that he had always paid the rent in full.

The landlord confirmed that no portion of the deposit was returned and that an Application claiming against the deposit was not made.

The tenant requested moving costs; no verification of costs was submitted as evidence.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages before me and the landlord did not claim against the deposit.

Move-in condition inspection and move-out condition inspection reports were not completed, as required by the Act. The landlord has not returned the balance of the deposit held by the landlord as the landlord believed the deposit could be used, by verbal agreement, for damages made to the unit.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony in relation to the deposit paid. I have also considered the burden of proof, which falls to the tenant, as the applicant. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the landlord over the tenant in relation to the portions of the deposit held, in lieu of full rent payments and that the landlord is now holding a balance in the sum of \$170.00.

Therefore, pursuant to section 38(6) of the Act, I find, as the landlord failed to return the deposit or to submit an Application claiming against the deposit and that the tenant is entitled to return of double the balance of the deposit in the sum of \$340.00.

In relation to the tenant's claim for compensation as the result of rent overpayments, I find that the following payments were made:

April 2007 to November 2008	800.00 per month
July 2010 to August 2010	900.00 per month
Allowable rent, in the absence of proper Notice given as provided by the Act:	800.00 per month throughout the tenancy

The burden of proof falls to the tenant and, in the absence of any evidence that rent increased by a further \$20.00 effective December 2009, I have accepted the landlord's submission that the additional \$20.00 increase occurred effective July 1, 2010.

The Act requires rent increases to be given in a very specific manner, as determined by Part 3, as follows:

Meaning of "rent increase"

40 In this Part, "rent increase" does not include an increase in rent that is
(a) for one or more additional occupants, and

(b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [requirements for tenancy agreements: additional occupants].

Rent increases

41 *A landlord must not increase rent except in accordance with this Part.*

Timing and notice of rent increases

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.

(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.

The landlord confirmed that no notice of rent increase, as provided by the Act, was ever issued to the tenant. The earliest date that notice of rent increase could have been given was January 2008, for a 3.7% increase effective no earlier than May 1, 2008. The next written notice of increase could be given, at least 3 full months in advance, taking effect May 1, 2009, at a maximum of 3.7%. The maximum allowable increase for 2010 was 3.2%.

As the landlord failed to give the tenant proper notice of rent increases, in the approved form, as required by the Act, I find that the tenant is entitled to compensation as follows:

	Amount Paid	Amount overpaid
December 2008 to June 2010	880.00 per month	18 months X 80.00 = 1,440.00
July 2010 to August 2010	900.00 per month	2 months X 100.00 = 200.00
TOTAL RENT OVERPAYMENT		1,640.00

The landlord is not entitled to the portion of the rent increase that may have been allowed, as notice of the rent increases were not given as provided by the Act. Even though the tenant paid the increased amount during this time; it does not alter my finding that the landlord did not adhere to requirements of the Act, by failing to give written notice in the amounts allowed.

As the tenant has applied for return of the deposit, in the sum of \$170.00, the balance of his total monetary claim is \$1,430.00. Therefore, as the tenant did not amend his Application I find that he is entitled to only the residue of the amount claimed; \$1,430.00; in compensation for rent overpayments made.

The tenant did not consider section 38(6) of the Act, by requesting return of double the deposit paid; however, I have found he is entitled to double the balance of the deposit held by the landlord, and have added the additional \$170.00 over and above the amount claimed by the tenant in his Application.

Therefore, the tenant is entitled to return of double the \$170.00 deposit in the sum of \$340.00 and \$1,430.00 in rent overpayments; totaling \$1,770.00.

No evidence of moving costs was provided by the tenant; that portion of his monetary claim is dismissed.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

I have enclosed copies of the translated *Guide for Landlords and Tenants in British Columbia* for each party.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,820.00, which is comprised of rent overpayments from December 2008 to August, 2010,

inclusive in the sum of \$1,430.00, double the \$170 deposit and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for **\$1,820.00**. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court 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: February 04, 2011.

Residential Tenancy Branch