

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for return of double the security deposit - Section 38;
2. A Monetary Order for compensation – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on May 1, 2006 and ended on April 31, 2012. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$500.00. A move-in inspection was completed.

The Tenant states that on June 1, 2010 the Landlord increased the rent from \$1,000.00 per month to \$1,100.00 per month. The Tenant states that this was agreed to at the time and the Tenant placed his initials on the Notice of Rent Increase (the “Notice”) provided to him by the Landlord. The Notice is dated May 1, 2012. The Tenant states that at the time of the agreement, the Tenants did not know that rent increases were regulated. The Tenants claim recovery of the amount of rent paid over what would otherwise have been the allowable increase. The Landlord states that the increase in rent was negotiated with the Tenant over a period of a couple of months and that the Notice provided the Tenant with information about tenant rights in relation to the increase. The Landlord states that the rent had not been increased during the tenancy

other than this once and that the amount agreed to reflected the level of rent that would have been payable had the Landlord increased the rent each year in accordance with the regulation.

The Tenant states that the Landlord failed to return the security deposit without conditions. The Tenant states that a cheque for \$516.98 was received from the Landlord on March 15, 2012 along with a letter stating that acceptance of the cheque constitutes a waiver of all claims by the Tenant. The Tenant states that "accepted as final payment" was noted on the cheque and that the cheque was only valid until May 31, 2012. The Tenants state that the cheque is still in their possession but that they are uncertain whether it is still negotiable. The Landlord states that on May 14, 2012 the cheque and letter were placed in the Tenant's paper holder at the unit as there was no mail box. The Landlord states that he wished to ensure that the security deposit was returned within the time frame allowed under the Act. The Landlord states that the Tenants left the unit clean and that even though there were some repairs needed to the unit at the end of the tenancy, the Landlord did not intend to make a claim for those costs.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given that the Landlord returned the full amount of the security deposit plus interest within the time required by the Act, I find that the Landlord is not required to pay the Tenants double the security deposit. However, I find that the Landlord's action in placing conditions on the negotiation of the cheque to be disingenuous as the Landlord was not returning money out of a contractual fulfillment but as a result of its statutory obligations and therefore had no right to place such conditions on the acceptance of the security deposit. For this reason, I find that the Tenants are entitled to recovery of the \$50.00

filing fee. I find that the Tenants are entitled to return of the security deposit of \$500.00 plus \$16.87 as interest for a total monetary entitlement of **\$566.87**.

Section 43 of the Act provides that a landlord may impose a rent increase only up to the amount, inter alia, agreed to by the tenant in writing. Given the Tenant's evidence that the Tenant agreed to the rental increase and placed its signature on the Notice, which contains information on tenant rights and rental increase, I find that the rent increase is valid and that the Tenants have not substantiated on a balance of probabilities its claim for return of rental monies paid during the tenancy. I therefore dismiss this part of the claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$566.87**. If necessary, this order may be filed in the 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: July 26, 2012.

Residential Tenancy Branch