



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant made application for compensation for damage or loss under the Residential Tenancy Act; the "Act", return for double the security deposit and to recover the filing fee from the tenant 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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The tenant's application dispute details indicated that the tenant was disputing an additional rent increase; which was reflected in his monetary claim breakdown. In support of the details of the application, I considered the claim for an additional rent increase.

At the start of the hearing I informed the parties that I would amend the tenant's \$3,000.00 claim to reflect the actual amount of any rent increase paid that was not in accordance with the Act; neither party objected.

Issue(s) to be Decided

Has the landlord issued an additional rent increase which entitles the tenant to compensation?

Is the tenant entitled to return of double the security deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced approximately 14 years ago; the current landlord purchased the property effective 2002. Rent was initially \$1,200.00 per month, due on the first day of the month. A security deposit in the sum of \$600.00 was paid on October 1, 1998.

The tenancy ended May 31, 2012, as the result of a 2 Month Notice to End Tenancy for landlord's use; the landlord had permits required by law to demolish the unit and required vacant possession. The tenant did not pay May, 2012; rent, as compensation provided by the Act.

The parties also agreed to rent payments paid and increases given were as follows:

	Monthly Increase Given	Monthly Rent Imposed
April 1 2007	50.00	1,250.00
July 1 2008	50.00	1,300.00
July 1 2009	50.00	1,350.00
2010	0	1,350.00
2011	0	1,350.00
2010	0	1,350.00 X 10 months

Each year that the rent was increased the tenant was given a letter from the landlord outlining an increase in costs, that supported the increase. Copies of these letters were supplied as evidence.

The tenant gave the landlord a letter dated March 3, 2007, asking that the increase for rent be issued in the approved form, with the required 3 months notice. A quote from the Residential Tenancy Branch guidelines was included in the letter, outlining the requirement for rent increases. The landlord did not choose to use the approved form or alter the method of imposing rent increases.

The landlord confirmed receipt of the tenant's forwarding address on June 1, 2012. The landlord completed a move-out condition inspection report, without have given the tenant notice of the inspection. A copy of the report was supplied as evidence. The landlord made deductions from the deposit and returned \$47.95 to the tenant. The tenant did not sign, allowing the landlord to make deductions from the deposit.

Analysis

Section 42 of the Act provides:

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.

(Emphasis added)

Rent may not be increased by more than the amount set each year by the Residential Tenancy Branch. The first notice of rent increase given effective April 1, 2007 exceeded the maximum allowable increase of 4% for that year. If proper notice had been given, in accordance with the Act, the allowable increase would have been \$48.00, not \$50.00. As the notice was not given in the approved form and not given at least 3 full months prior to the effective date of the increase, I find the rent increase failed to comply with section 42 of the Act.

Therefore, I find that all subsequent rent increases given from 2007, onward, were not in compliance with the legislation. They were all given in the same manner and therefore, failed to comply with the Act. The result is that rent remained at \$1,200.00 per month and that the tenant has overpaid rent owed since April 1, 2007 in the following sums:

	Monthly Rent Imposed	Paid over 12 months	Owed
April 1 2007	1,250.00	15,000.00	14,400.00
July 1 2008	1,300.00	15,600.00	14,400.00
July 1 2009	1,350.00	16,200.00	14,400.00
2010	1,350.00	16,200.00	14,400.00
2011	1,350.00	16,200.00	14,400.00
2010	1,350.00	13,500.00 (10 months)	12,000.00
TOTAL PAID		107,100.00	
TOTAL OWED			98,400.00
OVERPAID			8,700.00

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 was no evidence before me that the landlord gave the tenant an opportunity to participate in the move-out condition inspection report. The landlord completed a report, in the absence of the tenant and made deductions from the deposit without the tenant's written approval, as required by section 38(4) of the Act.

The landlord issued the tenant a 2 Month Notice to End Tenancy as he had permits required to demolish the unit. There was no evidence before me that the tenant disputed the Notice; he vacated on the required date. It is not clear why the landlord made deductions for cleaning when he had planned to demolish the unit. The landlord did not submit a claim against the deposit and returned a balance of \$47.95 to the tenant.

Therefore, as provided by section 38(6) of the Act, I find that the tenant is entitled to return of double the \$600.00 deposit paid to the landlord; plus interest in the sum of \$69.95; less \$47.95.

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.

A copy of the Guide for Landlords and Tenants in British Columbia is enclosed with this decision for each party.

Conclusion

I find that the tenant has established a monetary claim, in the amount of **\$9,972.00**, which is comprised of rent overpayment, double the deposit (less \$47.95), interest 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 in the sum of \$9,972.00. 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: July 05, 2012.

Residential Tenancy Branch