



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking for a monetary order for money owed or compensation for damage or loss, a monetary order for a return of her security deposit and to dispute an additional rent increase.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

The evidence was discussed and no party raised any issue regarding service of the evidence. However, although the tenant said that she sent a copy of the tenancy agreement, that document was not in the application file. I therefore allowed both parties to fax their copy of the tenancy agreement after the hearing, with the proviso that the document must be received prior to 4:00 p.m. on the hearing date. Both parties complied.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for alleged overpayment of rent and for a return of her security deposit?

Background and Evidence

This month to month tenancy began on April 1, 2011, ended on June 30, 2012 and the tenant paid a security deposit of \$225.00 on or about March 16, 2011.

The tenant said that the first month's rent was \$450.00 and the monthly rent thereafter until January 1, 2012, was \$500.00, at which time the monthly rent increased to \$600.00.

The tenant's monetary claim is in the amount of \$955.00, which includes a request for reimbursement of the alleged overpayment of \$100.00 each month from January through June 2012, for a total of \$600.00, her security deposit of \$225.00 and postal and fuel expenses.

The tenant's relevant evidence included the tenancy agreement, receipts for payments of rent and the security deposit, a receipt with her forwarding address and two witness statements.

The tenant said that the landlord informed her verbally in November and with a reminder in December 2011, that the rent was to be increased to \$600.00 per month from \$500.00. Thereafter until the end of the tenancy, the tenant paid \$600.00 per month, for which she seeks reimbursement of the alleged overpayment.

The tenant said that she left her forwarding address on the counter of the rental unit at the end of the tenancy and that the landlord did not return her security deposit until late July. The tenant pointed to her evidence, which was a copy of the note left for the landlord. The tenant further said that she made repeated attempts to contact the landlord about her security deposit, without success.

The tenant confirmed receiving a cheque from the landlord in the amount of \$225.00, which was mailed on July 19, 2012, but argues that she is entitled to receive another \$225.00 as the landlord failed to return her security deposit within 15 days of the end of the tenancy.

As to the costs for fuel and postage, the tenant said that she was required to file her application with a government agent's office in another town and that she does not drive, which necessitated hiring someone to provide transportation.

In response, the landlord said that the tenant agreed to the rent increase from \$500.00 to \$600.00, beginning on January 1, 2012, as noted in the signed tenancy agreement. The landlord termed the agreement as a "structured increase."

The landlord also argued that the rent had been lowered for compassionate reasons to accommodate the tenant.

In response to the security deposit issue, the landlord said that she did not receive the complete address of the tenant until July 12, 2012, via telephone. As the landlord was on a holiday at the time, she returned the security deposit of \$225.00 when she returned on July 19, 2012.

Analysis

Rent Increase-

Sections 40 through 43 of the Act address the issue of rent increases. A landlord is not allowed to increase the rent for at least 12 months after rent is established under a tenancy agreement and may not increase the rent more than allowable by the Residential Tenancy Regulation (4.3% in 2012) without the tenant's written consent.

In this case, the landlord contended that the tenant agreed in writing, pursuant to the tenancy agreement.

Residential Tenancy Branch Policy Guideline states that if the tenant agrees in writing to the proposed increase the landlord must still follow the requirements regarding the timing and notice of rent increases. In other words, the landlord is required to issue a notice of rent increase in the proper form and three months prior to the date the increase is to take effect.

Due to the above, I find the built-in rent increase as provided by the tenancy agreement to be in violation of the Act and Regulations as the increase took place less than 12 months after the beginning of the tenancy and as the landlord never issued the tenant a notice of rent increase in the proper form.

I therefore find that the monthly rent should have remained at \$500.00, not \$600.00 paid by the tenant. I find the tenant overpaid rent by \$100.00 per month for the period of January through the end of the tenancy, that being June 30, 2012 and has therefore established a monetary claim of \$600.00.

Security deposit-

The Act states that a landlord must repay the security deposit or make an application claiming against the security deposit 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. Should the landlord fail to comply with this portion of the Act, the tenant is entitled to receive her security deposit, doubled.

In this case, the tenant has not provided evidence that she delivered the landlord her complete forwarding address in writing. I find leaving a note on the counter is not sufficient delivery of a document under the Act and even had the note been sufficiently delivered, the address was not a complete forwarding address as no postal code was included.

I find the landlord received the tenant's forwarding address verbally on July 12, 2012, and that the landlord paid the full security deposit on July 19, 2012. Due to this, I find the landlord complied with the Act and I dismiss the tenant's claim for the \$225.00 for the penalty aspect of non-compliance.

Postage and fuel costs-

I find that I do not have authority to award an applicant for costs associated with processing a claim, such as fuel and postage costs, as these are not costs enumerated as recoverable under the Act. I therefore dismiss her monetary claim for those expenses.

Conclusion

Due to the above, I find the tenant has established a monetary claim of \$600.00 for overpayment of rent as described.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$600.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: August 10, 2012.

Residential Tenancy Branch