



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 dealt with an Application by the Tenant for a monetary order for overpayment of rent after an illegal rent increase, for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The Landlord explained she had limited facility with English, and was assisted by an advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

The Tenant filed this Application on February 19, 2013 and served the Landlord within the required three days. The Landlord did not give her evidence for the hearing to the Tenant until May 13, 2013, the day before the hearing. The Landlord's evidence was submitted to the branch two business days before the hearing. Under the rules of procedure evidence must be provided to the branch five business days before the hearing and to the other party to the dispute five calendar days before the hearing.

The deadlines for submitting evidence are explained in the Notice of Hearing and the hearing package materials supplied to both the parties. I find the Landlord breached the rules of procedure by submitting her evidence late, and therefore, I do not allow the documentary evidence of the Landlord. The Landlord was allowed to make verbal submissions during the hearing.

Issue(s) to be Decided

Was there an illegal rent increase?

Has there been a breach of section 38 of the Act by the Landlord?

Background and Evidence

The Tenant paid the Landlord a security deposit of \$400.00 on January 1, 2005. The Tenant vacated the rental unit on December 31, 2012.

The Tenant provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it registered mail to the Landlord on or about January 23, 2013.

The Landlord acknowledged receipt of the registered mail, containing the forwarding address of the Tenant, on January 31, 2013.

The Tenant did not sign over a portion of the security deposit and the Landlord testified she did not file an Application to keep the deposit.

The Tenant testified that the Landlord did not perform incoming or outgoing condition inspection reports. The Landlord did not dispute this.

The Tenant testified that the Landlord told him in December of 2009 that the monthly rent of \$800.00 per month, would be increasing by \$50.00 per month to \$850.00. The Tenant submitted in evidence a copy of a letter he sent to the Landlord, dated December 31, 2009, informing the Landlord that the Tenant required the approved form used to increase rent.

The Tenant testified that he paid the increased rent to the Landlord, as he was afraid of what might happen if he complained to the Landlord too much about the rent. The Tenant paid the \$850.00 in rent beginning in April of 2010. The Tenant claims for overpayment of rent from April 2010 to December 2012, and claims \$780.80 in overpayments.

In reply to the Tenant's claim regarding the security deposit, the Landlord alleged the Tenant did not clean the carpets, or clean a few other portions of the rental unit. The Landlord acknowledged she did not file an Application to keep any portion of the deposit, but felt she could keep it because of how the Tenant left the rental unit.

Regarding the rent increase, the Landlord argued that the Tenant paid the increased rent and so he verbally agreed to it. The Landlord argued that the Tenant mutually agreed to the rent increase and should not be able to claim for overpayment now.

The Landlord testified that the Tenant signed a new tenancy agreement on May 4, 2012, agreeing to the rent of \$850.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached sections 38 and 43 of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

Therefore, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

In regard to the rent increase, I find the Landlord breached section 43 of the Act, by raising the rent above the regulated amount of 3.2% for 2010. I further find the Landlord breached section 42 of the Act, by failing to use the approved form of a notice of rent increase.

The Tenant and the Landlord were not allowed under section 5 of the Act to verbally agree to an illegal rent increase, or to agree to not using the approved form. Section 5 of the Act prohibits the Landlord and the Tenant from avoiding or contracting out of the Act. In other words, the Landlord and the Tenant could not make an agreement that violated the applicable law.

I also note the Tenant was under a duty in section 7 of the Act to minimize the damage or loss suffered due to the Landlord's breach of the Act. Furthermore, I accept the verbal testimony of both parties that a new tenancy agreement was signed by both parties on May 4, 2012, indicating the rent was \$850.00. The verbal testimony leads me to find the Tenant agreed in writing to rent of \$850.00 in May of 2012.

I find the Tenant is not allowed to dispute the rent after May of 2012, as he agreed in writing to this amount. Although the Tenant argued during the hearing that he only signed this new tenancy agreement for the purposes of a mortgage application made by the Landlord, I am satisfied that the Tenant was aware of the effect of his action in signing the new tenancy agreement. I find the Tenant was aware in December of 2009, that the Act required certain steps to be taken in order to legally raise the rent. For example, the Tenant was aware of the length of the Notice period and the allowed increase percentage. I find that once the Tenant signed the new tenancy agreement he was agreeing to rent of \$850.00 per month, in writing, and it is not open to the Tenant to now dispute this amount of rent.

Therefore, I find the Tenant overpaid rent from April 2010 to April 2012.

I find the Landlord illegally increased the rent in April of 2010, and under section 43(5) of the Act the Tenant may recover the illegal overpayment up to April of 2012, a period of two years (24 months).

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches of the Act by the Landlord have caused the Tenant to suffer a loss.

I find the Tenant is entitled to double the security deposit and interest on the original amount, in the amount of **\$814.15**.

Under the Act and regulation, the Landlord was allowed to charge a rent increase of 3.2% in 2010, or \$25.60 per month. The Landlord increased the rent by \$50.00 per month. Therefore, I find the Tenant overpaid rent in the amount of \$24.40 for 24 months, totalling **\$585.60**.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$1,449.75**, comprised of double the security deposit plus the interest on the original amount totalling \$814.15 (2 x \$400.00 + \$14.15), the illegal rent increase overpayments of \$585.60, and the \$50.00 fee for filing this Application.

Conclusion

The Landlord breached the Act by not returning the deposit or filing an Application to keep it, within 15 days of the receipt of the Tenant's forwarding address, and by charging the Tenant an illegal rent increase. The Tenant did not agree in writing to the rent increase until he signed a new tenancy agreement.

The Tenant is granted a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: May 27, 2013

Residential Tenancy Branch

