



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, DRI, FF

Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, regulations or tenancy agreement, for the return of double the security deposit, to dispute a rent increase and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on October 22, 2013. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Is there a loss or damage and if so how much?
3. Is the Tenant entitled to compensation for loss or damage and if so how much?
4. Were there rent increases and if so were the rent increases valid?

Background and Evidence

This tenancy started on March 1, 2011 as a two year fixed term tenancy and then continued as a month to month tenancy. The tenancy ended August 15, 2013. Rent was indicated in the tenancy agreement dated February 13, 2011 as \$1,600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$800.00 on February 13, 2011.

The Tenant said that she moved out of the rental unit on August 15, 2013 and gave the Landlord a forwarding address in writing on September 6, 2013. The Tenant said there was no move in condition inspection done, but there was a move out condition inspection report completed. The Tenant said she signed the move out report as not in agreement to what the report said. The Tenant continued to say that she cleaned the

unit before leaving and she asked the Landlord for her security deposit back. The Tenant said she has not received her security deposit back and now she is requesting double the security deposit be paid to her as indicated in the Act.

As well the Tenant said that the Landlord increased her rent 3 times during the tenancy and the Landlord did not give her proper Notice of the rent increase or obtain her written agreement to increase the rent. The Tenant's agent said the Tenant paid the increases in rent because she had some health issues and did not want to move.

The Tenant and the Landlords agreed that the Tenant paid the following amounts of rent:

- March 2011, April, 2011 and May, 2011 \$1,600.00 per month
- June 2011 to May 2012 \$1,650.00 per month
- June 2012 to May 2013 \$1,700.00 per month
- June 2013 \$1,742.00
- July 2013 \$1,700.00
- August, 2013 \$449.00

The Tenant's agent said the rent payment should have been \$1,600.00 as the tenancy agreement states. As a result of the rent increases the Tenant agent said the Tenant is claiming \$2,042.00 in over payment of rent from March, 2011 to July, 2013.

In addition the Tenant's agent said the Tenant is requesting the recovery of the \$50.00 filing fee. The Tenant's agent said the Tenant has a total claim of \$3,692.00, but the Tenant is willing to settle this dispute if the Landlord pays the Tenant \$2,700.00 as there was confusion during the tenancy.

The Landlord said through the translator that she issued Notices of Rent Increase, but she did not send any copies of the Notices to Increase Rent in as evidence. The Landlord said the Tenant agreed to the rent increases, but there were no written agreements with respect to the rent increases. The Landlord said the Tenant paid the rent increases therefore the Tenant must have agreed to the rent increases.

The Tenant said she did not receive any written Notice of a Rent Increase.

Further the Landlord said the Tenant did not give proper notice to end the tenancy and there was unpaid rent for August, 2013; therefore the Landlord said they kept the Tenant's security deposit as compensation for those amounts.

The Landlord said through the Translator that she does not agree with the Tenant's claims and she will make her own application. The Landlord said they have not made an application as of yet and they decline the Tenant's offer of \$2,700.00 as full settlement of this dispute.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I accept the Tenant's testimony and written evidence that she gave the Landlord a forwarding address in writing on September 6, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by September 21, 2013. Consequently I find for the Tenant and grant an order for double the security deposit of \$800.00 in the amount of $\$800.00 \times 2 = \$1,600.00$.

Section 42 of the Act says:

(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.

The Landlord did not submit any corroborative evidence that supports their claim that they issued written Notices of a Rent Increase to the Tenant. The Tenant gave affirmed testimony that she did not receive any written notices regarding any rent increases. The burden of proving this claim lies with the Landlord and when it is just the one party's word against that of the other party that burden of proof is not met. I find the Tenant has proven the rent increased 3 times in the tenancy. As well the Landlord has not proven the rent increases had proper notice nor has the Landlord proven the rent increases complied with the Act therefore; I find the rent increases are invalid and the Tenant overpaid the rent stated in the tenancy agreement dated February 13, 2011, by \$2,042.00. I award the Tenant \$2,042.00 in overpayment of rent resulting from invalid rent increases.

As the Tenant was successful in this matter; I also order the Landlord to pay the Tenant the \$50.00 filing fee for this proceeding.

Pursuant to section 67 and 72 a monetary order for \$3,692.00 has been issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$1,600.00 over payment of rent in the amount of \$2,042.00 and the \$50.00 filing fee for a total amount of \$3,692.00

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38, 67 and 72 of the Act, I grant a Monetary Order for \$3,692.00 to the Tenant. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) 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: January 27, 2014

Residential Tenancy Branch

