



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with two related applications. One file was the landlord's application for an order of possession, a monetary order, and an order permitting retention of the security deposit in partial satisfaction of the claim. The other was the tenants' application for a monetary order which was a claim for return of overpayment of rent and payment of double the security deposit. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications one decision will be rendered for both.

The landlord said he did not receive a copy of the tenants' application for dispute resolution and notice of hearing. The tenants filed proof of service of their documents on the landlord by registered mail. The Canada Post web site showed that the item had been mailed on July 17 but had not been picked up. As service on the landlord complied with the Residential Tenancy Act, I proceeded with the tenants' claim.

The parties advised that the tenants had moved out of the rental unit. Accordingly, the application for an order of possession is unnecessary

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Issue(s) to be Decided

Are either of the parties entitled to a monetary order and, if so, in what amount?

Background and Evidence

Most of the evidence is undisputed.

This tenancy commenced June 15, 2009 as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. At the start of the tenancy the tenants paid a monthly rent of \$1100.00 due on the first day of the month. The tenants paid a security deposit of \$550.00.

The rent was raised twice during the tenancy. On April 30, 2012 the landlord served the tenants with a Notice of Rent Increase in the prescribed form raising the rent to \$1145.00 effective August 1, 2012. Again, on April 30, 2013 the landlord served the tenants with a Notice of Rent Increase in the prescribed form raising the rent to \$1200.00 effective August 1, 2013. The landlord and the tenants never signed any documents agreeing to these rent increases.

On May 31, 2014 the tenants gave the landlord written notice to end tenancy effective June 30. The moved out of the rental unit on June 30, without having paid any rent for June.

When they moved out there was an inspection conducted and a discussion about the washer and dryer but a move-out condition inspection report was never completed.

The tenants never provided their forwarding address to the landlord in writing.

Although there was some evidence about the payment of the utility bills neither party actually made a claim regarding an alleged underpayment or overpayment of the utilities.

Originally the landlord only claimed the June rent. The tenants said they did not pay the rent because they thought the overpayment of rent in the previous two years and the security deposit would cover anything owed.

The landlord subsequently amended his claim to add loss of rental income for July. He testified that the tenants were not cooperative with showing the unit. In fact, the second time he called about a showing they hung up on him so he never asked again. He also thought the tenants would be moving out mid-June in compliance with the 10-Day Notice to End Tenancy for Non-Payment of Rent and he had expected to be able to spend the last couple of weeks of June painting and refreshing the unit. Instead, he had to do that work in July. As of the date of the hearing he had not re-rented the unit.

The tenants testified that they were willing to co-operate with showings. The two or three times the landlord called they always agreed to the showing but asked for some time – 24 hours or less – to tidy up their home as they were in the middle of packing. On each occasion, no one came at the appointed time.

Analysis

Rent Increases

Section 43(1) of the *Residential Tenancy Act* states that a landlord may impose a rent increase only up to the amount:

- as prescribed by regulation;
- ordered in advance by an arbitrator; or,
- agreed to in writing by the tenant.

Section 43(5) states that if a landlord collects a rent increase that does not comply with this section, the tenant may deduct the increase from rent or otherwise recover the increase.

Each year the rate of the maximum allowable rent increase is set by regulation. The rate is calculated using the formula set out in section 22 of the *Residential Tenancy Regulation*. Put simply, the rate is the annual inflation rate plus 2%. The rate is published on the Residential Tenancy Branch web site. On the site there is a chart listing the historical maximum allowable rent increases since 2004.

More information about rent increases may be found in *Residential Tenancy Policy Guideline 37: Rent Increases*, which is also on the RTB website. The *Guideline* makes clear that payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

In 2012 the allow rent increase was 4.3%. The rent increase imposed by the landlord was 4.1%, within the amount allowed by regulation.

In 2013 the allowable rent increase was 3.8%. The rent increase imposed by the landlord was 4.8%, which is more than the amount allowed.

In 2013 the landlord could have raised the rent by \$43.51 from \$1145.00 to \$1188.51. From August 1, 2013 to May 1, 2014, the tenants overpaid the rent by \$114.90 (\$11.49 and 10 months).

June Rent

The landlord is entitled to payment of the June rent in the amount of \$1188.51.

July Rent

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

The evidence is clear that there was a very difficult relationship between the landlord and the tenants at the end of this tenancy; it is not as clear cut that the tenants refused entry to prospective tenants. There is no evidence that the unit was unrentable because the tenants left it too dirty or too damaged. Finally, the fact that almost six weeks after the tenants moved out the unit is still not rented suggests that the tenants' conduct may not be the sole reason for the landlord's loss of rental income in July. The landlord's claim for the July rent is dismissed.

Security Deposit

Section 38(1) of the *Residential Tenancy 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 either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit.

The tenants never provided their forwarding address in writing to the landlord so the fifteen day time limit has never been triggered. The tenants' claim for payment of the section 38(6) penalty is dismissed.

Filing Fees

As both parties have had mixed success on their respective applications, no order with respect to the filing fee paid by each side will be made.

Set-off

I have found that the landlord is entitled to payment of \$1188.51 from the tenants and the tenants are entitled to payment of \$114.90 from the landlord. Setting one amount off against the other I find that the landlord is entitled to payment of \$1073.61. I order that the landlord retain the deposit of \$550.00 and interest at the prescribed rate (0%) in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$523.61.

Conclusion

After set-off a monetary order in favour of the landlord has been made. 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: August 21, 2014

Residential Tenancy Branch

