



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, DRI, FF

Introduction

This Dispute Resolution hearing is convened to deal with an application by the tenant seeking a refund of double the \$700.00 security deposit paid, and a refund for two rent increases not properly implemented by the landlord in accordance with the Act.

Preliminary Matter

The landlord testified that the original tenancy began on December 15, 2011, between the landlord and two co-tenants. The landlord testified that the parties gave written Notice to vacate effective July 30, 2013. However, according to the landlord, the female co tenant and the landlord apparently made a verbal agreement for a tenancy to continue after the termination of the first agreement, for a tenancy between the landlord and only the female tenant.

I find that this application and the dispute before me pertains only to the original tenancy between the landlord and the two co-tenants that began on December 15, 2011 and ended June 30, 2013.

I find that the second verbal tenancy agreement is considered under the Act to be a completely new agreement and would be a different tenancy entirely. Therefore this hearing will proceed with respect to the original written tenancy agreement between the landlord and the two co-tenants that ended effective June 30, 2013.

Issues to be Decided

- Is the tenant entitled to a return of double the security deposit pursuant to section 38 of the Act?
- Is the tenant entitled to a refund of rent due to noncompliant rent increases imposed by the landlord?

Background and Evidence

The parties testified that the tenancy originally began on December 15, 2011 and rent started out as \$700.00 per month. A security deposit of \$700.00 was paid. I find that the tenancy ended on June 30, 2014.

The landlord testified that the tenant did not actually provide a written forwarding address at the end of the tenancy, but the tenant's mailing address, which consisted of a post office box number, remained the same.

Submitted into evidence was a copy of the written tenancy agreement indicating that the rent would be \$700.00. However, a term in the tenancy agreement stated:

*"The Rent for the Premises will increase over the Term of the Lease as follows:
After six months we will review and discuss and increase of One hundred dollars"*

(Reproduced as written)

The tenant testified that on July 2012, the landlord imposed a rent increase of \$125.00, making the rent \$825.00 per month, which the tenants paid until January 1, 2013. The tenant testified that, at this time, the landlord imposed a further rent increase of \$50.00. The tenant testified that they then paid the new rent of \$875 from January 2013 to June 2013. The tenant is claiming a refund of the overpaid rent.

The landlord acknowledged that no Notice of Rent Increase was ever issued on the approved RTB form. The landlord pointed out that the parties had mutually agreed to the periodic increases in the rent.

The tenant testified that because the landlord failed to return the security deposit within 15 days of the end of the tenancy, they would be validly entitled to a refund of double the security deposit in the amount of \$1,400.00.

Analysis

Security Deposit Claim by Tenant

Based on the evidence, I accept that the security deposit paid was \$700.00 and that this tenancy ended June 30, 2014.

Section 38(1) of the Act states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address in writing, a landlord must either:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

Or

- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find that the landlord did not return the tenant's security deposit nor make an application to keep it. However, I also find the landlord didn't receive the tenant's written forwarding address after the tenancy ended. I find that no faddress was sent until the landlord received the copy of the tenant's application and notice of claim.

Based on the above, I find that the tenant is entitled to receive only a refund of the \$700.00 security deposit being held in trust by the landlord, and is not entitled to an additional \$700.00 representing double the security deposit.

Claim for Overpaid Rent

With respect to the tenant's claim for over-paid rent, I find that the evidence confirmed that additional rent of \$125.00 was collected for 6 months from July 2012 to December 2012 and that this amount of additional rent was increased by another \$50.00 for the period from January 2013 until June 30, 2013.

Section 43(1) of the Act states that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations,(b) ordered by the director on an application under subsection (3), or (c) agreed to by the tenant in writing.

Even if it was proven that the parties both agreed in writing to a rent increase that exceeded the percentage allowed under the Act and Regulation, section 41 of the Act states that the landlord is still required to follow the process provided by the Act in implementing a rent increase.

Section 42(2) and 42(3) of the Act states that a landlord must give a tenant a **Notice of Rent Increase** on the approved form at least 3 months before the effective date of the increase.

In this instance, I find that there was no written consent by the tenant. Furthermore, I find that the landlord did not follow the proper process as described in section 42 by failing to serve the tenant with the formal Notice of Rent Increase at least three months in advance of the effective date, and neglecting to issue the Notice on the approved form.

In regard to the landlord's argument that the tenancy agreement includes a specific term permitting the landlord to increase the rent, I find that I find that Section 5 of the Act states that landlords or tenants may not avoid or contract out of the Act or Regulation and that any attempt to avoid or contract out of the Act or Regulation is of no force or effect. I find that the inclusion of a tenancy term that purports to include an increase in rent, is contrary to the Act and is of no force nor effect.

Section 43(5) states, "*If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase*". Based on the Act, I find that the tenant is therefore entitled to be compensated in the amount of \$750.00 for additional rent charged from July 2012 until December 2012 and \$1,050.00 for the additional rent collected from January 2013 to June 30, 2013.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$2,550.00, comprised of \$700.00 security deposit refund, \$1,800.00 excessive rent collected not in compliance with the Act and the \$50.00 cost of the application.

I hereby grant a monetary order to the tenant for \$2,550.00. This order must be served on the landlord and if unpaid may be enforced in Small Claims Court.

Conclusion

The tenant is partly successful in the application and is granted a monetary or for the refund of the security deposit and excessive rent charged in violation of the Act.

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 05, 2014

Residential Tenancy Branch

