



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD,

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were scheduled to be heard together however the landlord did not serve the notice of hearing on the tenant within a reasonable timeframe and certainly not within three days required, and therefore I'm not willing to proceed with the landlord's application.

Therefore today's hearing dealt with the tenant's application for a Monetary Order for \$1,829.00.

Some documentary evidence, photo evidence, and written arguments have been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the tenant established a monetary claim against landlord, and if so in what amount?

Background and Evidence

This tenancy began on June 1, 2009 and at that time the security deposit of \$975.00 was collected.

To date the landlord has not returned any of the security deposit and therefore the tenant is requesting the return of the full security deposit less \$76.00 to cover the cost resulting from lost keys and a visitor parking pass.

The tenant also believes that the landlord should pay double the security deposit for failing to return the deposit within the 15 day time frame required under the Residential Tenancy Act.

The tenant is also requesting that the landlord pay \$430.00 for repair to the food waste disposer unit in the rental property. The tenant testified that the unit broke down, and since they considered it an emergency, a plumber was called to repair the unit without notifying the landlord. The tenant believes however, since it was an emergency, the landlord should be reimbursing the cost of that repair.

The tenant is also alleging that, on three occasions, the landlord failed to give the proper three-month notice of a rent increase, only giving one month verbal notice, and therefore the tenant is requesting the return two months overpayment for each of those rent increases. In 2010 the rent was increased \$150.00 per month, in 2011 the rent was raised \$50.00 per month, and in 2012 the rent was raised again by \$50.00 per month.

Therefore the total claim that the tenant is requesting is as follows:

Return of security deposit less \$76.00	\$899.00
Cost to repair food waste disposer	\$430.00
Illegally collected rent increases	\$500.00
Filing fee	\$50.00
Total	\$1879.00

The landlords dispute the request for the cost to repair the food waste disposer, as they were never notified that it needed repair. They were not even aware that it had been repaired until well after the tenant claims the repair was done.

The landlords also dispute the claim for an illegal rent increase, because the tenant agreed to each rent increase prior to the landlord collecting any of those rent increases.

In response to the landlords testimony the tenant did state that they did not inform the landlord of a need to repair the food waste disposer prior to doing the repair, and they did verbally agree to the rent increases that they paid, however again she states she did not get the required three months' notice.

Analysis

I will not order the return of double the security deposit, because the landlord did apply for dispute resolution within the required timeframe, however I will order the return of the full security deposit minus the \$76.00 deduction allowed by the tenant because the landlord's application is not proceeding, for failure to serve the documents within the required time frame.

I will not allow however the claim for repair of the food waste disposer, because the tenant has admitted, the landlord was not given an opportunity to repair the unit before the tenant did the repair done. I landlord cannot be held liable for the cost of a repair

when they are not even aware that there is a problem and that repair is done without any notification to the landlord.

I will however allow the claim for rent overpayment. The Residential Tenancy Act is very clear that a three-month written notice of rent increases is required, and it is my decision that since the landlord collected rent prior to that three-month period, the landlord must reimburse the tenant that rent overpayment.

Therefore the total amount of the tenant's claim that I have allowed is as follows:

Return of security deposit minus \$76.00	\$899.00
Rent overpayment	\$500.00
Filing fee	\$50.00
Total	\$1449.00

Conclusion

I have issued an Order for the landlord to pay \$1449.00 to the tenant, and the remainder of the tenants claim is dismissed without leave to reapply.

The landlord's application is dismissed in full with leave to reapply, except the landlord may no longer claim against the security deposit as I ordered the return of the security deposit to the tenant.

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: October 27, 2014

Residential Tenancy Branch

