



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an order regarding a disputed additional rent increase pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;

Both parties attended the hearing. A witness for the landlord attended as did an assistant to the tenant. Both parties and the witness were given a full opportunity to be heard, to present sworn testimony, and to make submissions. Both parties confirmed receipt of the other's materials for hearing.

Issue(s) to be Decided

Is the tenant entitled to an order regarding a disputed additional rent increase?
Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to an order for return of all or a portion of her security deposit?

Background and Evidence

This tenancy began on August 1, 2009 as a fixed term tenancy and continues to the date of this hearing. The rental amount is currently \$1200.00 payable on the first of each month. The landlord testified that he continues to hold a \$600.00 security deposit paid by the tenant on July 10, 2009.

The tenant testified that she provided notice to the landlord that she would vacate the rental unit on January 25, 2015. She testified that she vacated the rental unit on March

1, 2015. She testified that she did not provide a forwarding address to the landlord at any time. She submitted that the landlord should have returned her deposit but that the day that she was moving out of the unit, the landlord attended and told her that she would not receive any of her security deposit back.

The tenant also testified that she has been overpaying her rent since October 2013. She testified that, at that time, she began to pay an additional \$200.00 per month. She testified that she asked the landlord to make some upgrades within the unit, including replacing windows. The tenant testified that, after those windows were replaced, the landlord asked if she would agree to a rental increase. She testified that she agreed to the rental increase, signing a mutual agreement with the landlord for the increase at the time the increase began. The tenant testified that she did not realize that the rent increase was beyond the regularly authorized limits prescribed by the Residential Tenancy Branch when she agreed to the increase.

The landlord submitted that the rental increase had been agreed upon by both parties after six years of tenancy and several upgrades to the rental unit, including the replacement of windows. He testified, without dispute from the tenant, that the agreement was in writing.

With respect to the security deposit, the landlord testified that he did not make a formal application for dispute resolution to retain a portion of the tenant's security deposit. He testified that he spoke to the tenant at the end of her tenancy and advised her that he would not be returning her security deposit because of damage to the rental unit. The landlord testified that the rental unit needed to be painted at the end of this tenancy. He testified it had last been painted in 2009. The landlord testified that there were areas of damage within the residence including but not limited to a broken window.

Analysis

Section 43(1)(c) of the *Act* allows a landlord to impose a rent increase beyond the Residential Tenancy Regulations and in an amount that is greater than the basic Annual Rent Increase if that increase is agreed to in writing by the tenant. Further, section 43(2) states that if the landlord has complied with the provisions of section 43, the tenant may not make an application for dispute resolution. In this case, the landlord provided undisputed testimony that the tenant agreed in writing to the rent increase in an amount greater than the basic Annual Increase. I note that both parties agreed this was the only rental increase during the course of the 6 year tenancy. I also note that the increase was agreed upon in 2012 and the tenant regularly paid the increased amount until the end of the tenancy. I find the tenant is not entitled to dispute the rental increase in

these circumstances. Therefore, I dismiss the tenant's application to dispute the rental increase.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the evidence is that the tenant did not provide a forwarding address in writing. Therefore the landlord's obligations to return it had not yet been triggered. The tenant must provide the landlord with the forwarding address in writing to trigger his obligation to return the security deposit. I note that, one year after the end of the tenancy, a landlord may retain deposits if forwarding address not provided,

39 Despite any other provision of this *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Based on the evidence before me, I find that the tenants have not provided a forwarding address to the landlord and therefore have not yet triggered his obligation to take action with respect to their security deposit. Under these circumstances, I dismiss the tenant's application with respect to the recovery of their security deposit.

As the tenant has not been successful in this application, I find further that the tenant is not entitled to recover the filing fee paid for this application.

Conclusion

I dismiss the entirety of the tenant's application without leave to reapply.

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: May 25, 2015

Residential Tenancy Branch

