



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, MNSD, FF, O

Introduction

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

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 9, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absences.

The Tenant’s Advocate said the Landlord did not pick up the Tenant’s hearing package but the Advocate was in contact with the Landlord so the Landlord was aware of the Tenant’s application and the hearing information.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?
2. Is the Tenant entitled to compensation for loss of damage and if so how much?
3. Is the Landlord’s rent increase valid?
4. What other considerations are there?

Background and Evidence

This tenancy started in April, 2011 as a month to month tenancy. The tenancy ended June 25, 2015. Rent was \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy. No move in or move out condition inspection reports were completed for this tenancy.

The Tenant said that he was given a 2 month eviction notice on February 15, 2015 but the Notice to End Tenancy was not on a proper form. Following this the Tenant gave his written notice at the end of May to move out at the end of June, 2015. The Tenant said he moved out on June 25, 2015. The Tenant continued to say that he and his son moved out of the rental unit because of the harassment from the Landlord, her family

and realtors from January, 2015 to June, 2015. The Tenant said the Landlord wanted to sell the rental property so she gave him the illegal eviction notice on February 15, 2015 and increased the rent from \$840.00 to \$1,050.00 in April, 2015. The Tenant said the Landlord also made numerous visits to the property with and without realtors without any Notice to the Tenant. The Tenant said realtors entered the rental unit at least 6 times without and notice and the realtor did not show up at least 6 times after giving notice to enter the rental unit. The Tenant said the realtors did not advise him when they were not coming to an appointment. As well the Tenant said the Landlord left threatening messages on his phone and was very abusive to the Tenant and his son when the Landlord and her family came to the rental unit. The Tenant submitted an audio tape of one of the Landlord's visits to the rental unit. The Tenant said the tape confirms the abusive language and total disregard for the Tenant, the Tenant's son and the Tenant's rights. As a result of the Landlord's behaviour and actions the Tenant said he has made the following application for compensation:

1. The Tenant's Advocate said the Tenant gave the Landlord his forwarding address on July 16, 2015 and only received \$150.00 of his deposit back on July 24, 2015. The Tenant said the Landlord deducted \$250.00 for damage to the unit. The Tenant said there was no damage and he hired a cleaning service to clean the unit after he moved out.
2. Secondly the Tenant's Advocate said the Tenant is applying for \$2,100.00 for loss of quiet enjoyment of the rental unit from January, 2015 to June, 2015 due to the constant harassment and many entries to the unit without proper notice. The Advocate said they calculated this by 6 months at \$350.00 (1/3 of the rent) per month. The total application for loss of quiet enjoyment is \$2,100.00.
3. The Tenant continued to say that he is also requesting moving costs of \$240.00 because he did not want to move but he felt forced to move. The Tenant said he did not provide a paid receipt for the moving costs.
4. The Advocate said that the rent increase was not done on the proper form and it was well above the approved rent increases allowed under the Act. The Advocate said the Tenant's rent went up from \$840.00 to \$1,050.00 in April, 2015 based on the Landlord saying the Tenant had to pay the new rent or the Tenant had to move out. The Advocate said the Tenant is requesting \$210.00 the increased rent for the months of April, May and June, 2015 in the amount of \$630.00.
5. The Advocate also requested \$2,100.00 for compensation because the Landlord issued a 2 Month Notice to End Tenancy for the Landlord's use of the property. The Advocate said she thought that was the compensation amount.
6. The Advocate continued to say the Tenant is also requesting to recover the filing fee of \$100.00 if he is successful.

The Tenant's Advocate said the Tenant's total claim is for \$6,050.00.

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 that he gave the Landlord a forwarding address in writing on July 16, 2015. The Landlord did not repay the full 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 July 31, 2015. Consequently I find for the Tenant and grant an order for double the security deposit of \$400.00 in the amount of $\$400.00 \times 2 = \800.00 less the \$150.00 already returned to the Tenant from the Landlord on July 24, 2015. I award the Tenant \$650.00.

Secondly section **28** of the Act says a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

I have reviewed the Tenant's testimony, written evidence and audio evidence that the Tenant has submitted. I accept the Tenant's testimony that the Landlord and realtors entered the rental unit on many (more than 6 times) without proper notice to the Tenant. As well the realtors did not contact the Tenant when they made appointments and did not show up to the appointments which illustrates a disregard for the Tenant and an unprofessional behaviour. The Landlord is responsible for the realtors' action when the Landlord gives permission to the realtor to enter the property. Further the audio evidence graphically illustrates the disregard the Landlord had for the Tenant, his family and the rights of a tenant. The Landlord verbal abused the Tenant and his family and made inflammatory remarks and demands against the Tenant. I find the Landlord disturbed the Tenant's quiet enjoyment of the rental unit on many occasions from January, 2015 to June 2015. Consequently, I find the Tenant has established grounds for compensation for loss of quiet enjoyment of the rental unit and I accept the Tenant's request for compensation of 1/3 of the rent paid from January to June, 2015, but I am adjusting the April, May and June, 2015 rent to the original rent of \$840.00 due to the invalid rent increase. I find the Tenant has established grounds for compensation of \$280.00 per month instead of \$350.00 per month based on the invalid rent increase. I award the Tenant 6 months X \$280.00 = \$1,680.00 for loss of quiet enjoyment of the rental unit from January to June, 2015.

With regard to the Tenant's request for moving costs, the Tenant has indicated that the two month notice to end tenancy the Landlord gave him was not valid and that he gave notice to end the tenancy at the end of May, 2015 to move out at the end of June, 2015. As the Tenant ended the tenancy by his own choice the Tenant's claim for moving costs is not valid. Tenants that move out on their own notice to end tenancy are responsible for their own moving costs. I dismiss the Tenant's claim of \$240.00 for moving costs.

Further it is the responsibility of any Landlord to comply with the Act on all rent increases. Section 41 of the Act says a landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (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.

Amount of rent increase

43 (1) 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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) 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.

The Landlord has not complied with the Act as the Landlord increased the rent from \$840.00 to \$1050.00 in April, 2015 which is in contradiction to the Act. Consequently I find the rent increase invalid and a violation of the Act and I award the Tenant \$210.00 X 3 months (April, May and June, 2015) = \$630.00 to recover rent paid that was not due because of the invalid rent increase. I award the Tenant \$630.00.

With regard to the Tenant's request for compensation that would result from the issuing of a 2 Month Notice to End Tenancy. I find no valid 2 Month Notice to End Tenancy was issued therefore no compensation is required to be paid. I dismiss the Tenant's request for compensation of \$2,100.00 as a result of receiving a 2 Month Notice to End Tenancy.

As the Tenant was successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord; pursuant to section 67 a monetary order for \$ has been issued to the Tenant as follows:

Double Security Deposit less \$150.00	\$ 650.00
Compensation for loss of quiet enjoyment	\$1,680.00
Return of invalid rent increase	\$ 630.00
Recover filing fee	\$ 100.00
Total	\$3,060.00

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$3,060.00 to the Tenant. The order must be served on the Respondent 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: October 21, 2015

Residential Tenancy Branch

