



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI MNDC MNSD FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for a disputed rent increase; authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:14pm in order to enable the landlord to connect with this teleconference hearing scheduled for 1:00pm. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The tenant testified that she personally served the landlord with her Application for Dispute Resolution with Notice of Hearing ("ADR") on December 19, 2016. I accept the sworn testimony of the tenant that she personally served the landlord with her ADR and I find that the tenant has provided sufficient proof of service to the landlord.

Issue(s) to be Decided

Is the tenant entitled to dispute a rent increase by the landlord?

Is the tenant entitled to a monetary order that includes an amount equivalent to double the value of her security deposit as well as any overpayment in rent?

Is the tenant entitled to the recovery of her filing fee?

Background and Evidence

This tenancy began on approximately December 2014 with no written tenancy agreement. The tenant was unable to provide the exact start date of the tenancy. The tenant testified that she paid a \$250.00 security deposit at the outset of the tenancy and that the landlord continues to hold the deposit. She sought the return of the security deposit from the landlord.

The tenant testified that her rent was initially set at \$500.00 payable on the 15th of each month. The tenant testified that, in approximately December 2015, the landlord raised the monthly rental amount from \$500.00 to \$575.00. The tenant submitted returned cheques to the landlord that indicate a rental amount of \$500.00 paid by the tenant in December 2014. The tenant submitted returned cheques to the landlord in an amount of \$575.00 paid by the tenant in; August 2015; September 2015; October 2015; November 2015; and December 2015. The tenant provided sworn undisputed testimony that the landlord provided no formal notice of a rental increase.

The tenant submitted a copy of her notice to end her tenancy dated November 28, 2015. That letter included her forwarding address and a formal request for the return of her deposit after the end of the tenancy. She also included the section of the Residential Tenancy Act that is applicable to the landlord's return of a tenant's security deposit.

The tenant also submitted copies of text communication between the tenant and the landlord highlighting disagreements between the parties both at the beginning and the end of the tenancy, particularly with respect to the cleanliness of the rental unit. The landlord has made no application to retain the tenant's security deposit.

Analysis

Security Deposit: 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 landlord was informed of the tenant's forwarding address before the end of the tenancy, and the tenancy ended on December 15, 2015. The landlord had 15 days after December 15, 2015 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenant testified that she did not agree to allow the landlord to retain any portion of her security deposit. As there is

no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of her deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of both her security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant's deposit within the prescribed timeline and he also did not attend the hearing to address the tenant's application for return of the deposit. I find that the tenant's testimony has provided sufficient proof that the landlord was deemed served in accordance with the *Act*. Therefore, I find that the tenant is entitled to a monetary order including \$250.00 for the return of the full amount of her security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed, sworn evidence of the tenant and documentary materials before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant gave sworn oral testimony that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of her security deposit with any interest calculated on the original amount only. No interest is payable for this period.

Rent Increase: In accordance with the *Residential Tenancy Regulation*, a landlord may impose an Annual Rent Increase up to, but not greater than, the percentage amount specified in the Regulation for 2015 (i.e., 2.5%). The *Act* allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase.

The landlord did not apply for an Additional Rent Increase pursuant to Part 3 of the Act which includes the following provisions,

- 41 A landlord must not increase rent except in accordance with this Part.
- 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. ...
- 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.
- (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...

Based on the testimony of the tenant, and the evidence submitted for this hearing, I find that the landlord increased the tenant's monthly rent beyond the allowable annual increase amount without the appropriate forms to serve as notice prior to any rental

increase. Furthermore, I find that the landlord did not provide notice to the tenant with respect to the increase in rent. Therefore, I find that the tenant is entitled to recover the increased rental amount/\$75.00 overpayment amount for the months of; August 2015; September 2015; October 2015; November 2015; and December 2015.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary award to the tenant as follows,

Item	Amount
Return of Security Deposit	\$250.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	250.00
Return of Rent Overpayment (\$75.00 x 5)	375.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order to the Tenant	\$925.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 13, 2016

Residential Tenancy Branch