



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

On April 23, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the filing fee for the Application.

The matter was scheduled as teleconference hearing. Both parties attended the hearing. The hearing process was explained and the parties were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to the return of double the security deposit?
- Are the Tenants entitled to money owed or compensation?

Background and Evidence

The parties testified that the tenancy began on June 1, 2012 and ended on March 31, 2018. Rent in the amount of \$2,100.00 was due by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,050.00.

Security Deposit

The Tenant testified that the Landlord did not claim against, or return, the security deposit within 15 days after the tenancy ended and the Landlord received the Tenant's forwarding address in writing.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit.

The Tenant testified that she received \$840.00 of the security deposit from the Landlord on May 1, 2018. The Tenant testified that the repayment was late and the Landlord withheld \$210.00 of the deposit.

In reply, the Landlord testified that she believed that she had 30 days to deal with returning the security deposit.

The Landlord acknowledged that she received the Tenants' forwarding address in writing. She testified that she knows she was late returning the deposit, and pointed out that the Tenant was often late making her payments to her during the tenancy. The Landlord acknowledged that she returned \$840.00 to the Tenants at the end of April 2018.

Illegal Rent Increase

The parties participated in a previous hearing on December 18, 2017. The Arbitrator found that the rent increases given to the Tenant in May 2016, and April 2017, were not in compliance with the Act. The Arbitrator ordered that the Tenant may deduct the illegal increase from rent or otherwise recover the increase.

The Tenant testified that she did not recover the amount of the illegal rent increase from the Landlord by withholding the amount from the future rent. The Tenant moved out of the rental unit a couple of months after receiving the Arbitrators Decision. The Tenant is seeking to recover a rent overpayment of \$147.00 per month for the period of April 1, 2016, to January 1, 2018 (21 months). The Tenant testified that when she first became aware that the Landlord had charged her an illegal amount of an increase she applied for dispute resolution.

In reply, the Landlord testified that the Tenant should have withheld the rent overpayment from future rent owing. She testified that the Tenant continued to pay the full rent after receiving the previous Decision.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay 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.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

I find that the Tenants provided their forwarding address to the Landlords on February 25, 2018. There is no evidence before me that the Landlords applied for dispute resolution within 15 days of the end of the tenancy. I find that there was no agreement from the Tenants that the Landlord could retain the security deposit. I find that the amount of \$840.00 that the Landlord returned to the Tenant on April 25, 2018, was not the full amount and was late.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit. The Landlord owes the Tenants \$2,100.00. After setting off the amount of \$840.00 that was already returned, I order the Landlord to pay the Tenants the balance of \$1,260.00.

With respect to the illegal rent increase, I find that the Landlord applied an illegal rent increase in the amount of \$147.00 each month. I find that the Tenant paid the extra \$147.00 in rent for 21 months from April 1, 2016, to January 1, 2018. I find that the Landlord owes the Tenants the amount of \$3,087.00 for the illegal rent increase.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$4,447.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlords failed to return the security deposit to the Tenants in accordance with the legislation.

The Landlord applied a rent increase that was not in the approved form and was for more than the amount permitted by the legislation.

The Tenants are granted double the amount of the security deposit and the portion of the illegal rent over-payments. I grant the Tenants a monetary order in the amount of \$4,447.00.

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 29, 2018

Residential Tenancy Branch