



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDCT, MNSD, FFT

### **Introduction**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$2430 including an order for double the security deposit/pet damage deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on July 18, 2018. The Tenant provided evidence that it was received by the landlord on July 20, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 1, 2012. The rent was initially \$1200 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$600 and a pet damage deposit of \$300 at the start of the tenancy. The rent was \$1275 when the tenancy ended.

The tenancy ended on February 28, 2017.

The tenant(s) provided the landlord with his/her their forwarding address in writing on January 30, 2017 and on February 28, 2017. The tenant(s) included copies of both documents with their materials.

The tenant testified the rent was initially \$1200 per month. She was given a rent increase of \$75 per month commencing January 1, 2016. This was more than permitted under the Act. At the time the maximum allowable increase was 2.5% which would amount to \$30 per month. The tenants made overpayments of rent of \$45 per month more than the allowable rent increase for 14 months for a total of \$630 (January 1, 2016 to February 28, 2017). .

Tenants' claim for double the Security Deposit/Pet Damage Deposit:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$600 and a pet damage deposit of \$300 for a total of \$900 at the start of the tenancy. I determined the tenancy ended on February 28, 2018. I further determined the tenants provided the landlord with their forwarding address in writing on January 27, 2017 and February 28, 2018. The landlord testified he does not recall receiving the letters containing the forwarding address. I determined the tenants had provided the landlord with their forwarding address.

The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit/pet damage deposit or the sum of \$1800.

Tenants' Claim for Rent Increase not permitted by the Act:

Section 41 to 43 of the Residential Tenancy Act includes the following:

Rent increases

41 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 payable for the rental unit;

(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.

...

(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.

I determined the Notice of Rent Increase form given by the landlord effective January 1, 2016 increase the rent from \$1200 to \$1275 per month was \$45 more than the

allowable rent increase calculated in accordance with the regulations. As a result I determined the tenant is entitled to recover \$630 (14 months @\$45 per month = \$630 (from January 1, 2016 to February 28, 2017).

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2430 plus the sum of \$100 in respect of the filing fee for a total of \$2530.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on both parties.**

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: November 01, 2018

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Residential Tenancy Branch