



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlord via Canada Post Registered Mail. Both parties confirmed the tenants served the landlord with their two submitted documentary evidence packages via Canada Post Registered Mail on February 8, 2019 and again on May 10, 2019. Both parties confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on May 6, 2019. Neither party raised any service issues.

I accept the undisputed testimony of both parties and find that the tenants served the landlord with the notice of hearing package and that both parties properly served the other with the submitted documentary evidence pursuant to sections 88 and 89 of the Act. Both parties are deemed sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2012 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 1, 2012. The monthly rent began at \$1,200.00 payable on the 1st day of each month. A security deposit of \$600.00 and a pet damage deposit of \$200.00 were paid on August 1, 2012.

Both parties confirmed the landlord has retained the security and pet damage deposits. Both parties agreed that the anniversary to increase rent was January 1.

The tenants seek a monetary claim of \$1,967.42 as compensation for return of an illegal rent increase (Over Payment) and return of double the security and pet damage deposits. The tenants detail the owed amount listed below as:

\$1,967.42	\$46.07	March 2018
	\$46.07	April 2018
	\$46.00	May 2018
	\$46.14	June 2018
	\$46.07	July 2018
	\$46.07	August 2018
	\$94.00	January/February 2018
	\$1,600.00	Return of Security and Pet Damage Deposit(s) And Compensation Sec. 38(6)
	\$600.00	Security Deposit
	\$200.00	Pet Deposit
	\$600.00	Compensation, Sec. 38(6)
	\$200.00	Compensation, Sec. 38(6)

Both parties confirmed that the above amounts regarding "an illegal rent increase" are accurate in terms of the amount paid to the landlord for monthly rent in excess of the original \$1,245.00 which was subject to a notice of rent increase which began on January 1, 2017.

The tenants claim that in June 2017 the landlord served the tenants with a notice of a rent increase to begin on September 1, 2017 increasing the rent from \$1,245.00 to

\$1,291.07. The tenants argued that this notice was premature and that the anniversary to allow rent increases did not occur until January 1. The tenants' claims that the landlord "took back" the notice of rent increase and that they have never been served with a notice of rent increase since. The tenants stated that they accepted and paid the rent increase out of "fear of eviction" even though no notice was served.

The landlord dispute(s) the tenants' claims arguing that early notice was given to the tenants in June 2017 via text for a rent increase to begin on January 1, 2018. The landlord also stated that a written notice of rent increase was issued and served to the tenants for September 1, 2018 for a rent increase from \$1,245.00 to \$1,291.07 to take effect on January 1, 2018.

Both parties confirmed the tenants began paying the above stated rent increase amounts on January 1, 2018.

Both parties confirmed that the tenancy ended on September 1, 2018 and that the landlord received the tenants forwarding address for return of the combined deposits on the same day. The landlord provided undisputed testimony that she was holding the security and pet damage deposits due to a disagreement on damage(s). The landlord stated that she has not filed an application for dispute of returning the deposits nor has the landlord received the tenants' permission to retain it.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, both parties confirmed that the amounts claimed by the tenants are the increased amounts per month as listed below:

\$46.07	March 2018
\$46.07	April 2018
\$46.00	May 2018

\$46.14	June 2018
\$46.07	July 2018
\$46.07	August 2018
\$94.00	January/February 2018

The tenants have claimed that the landlord increased the monthly rent from \$1,245.00 to \$1,291.07 without a proper notice. The tenants stated that they accepted paying this increase beginning January 1, 2018. Both parties agreed that the increases were paid as claimed by the tenants until September 1, 2018 when the tenancy ended. The landlord has disputed the tenants' claim and argued that an actual notice of rent increase was served to the tenants in September 2017 to begin January 1, 2018.

I find on a balance of probabilities that the tenants have failed in their claim. Both parties rely heavily on direct testimony regarding the notice of rent increase or lack thereof. On this basis, I find that it is inconclusive that the tenants were subject to an illegal rent increase. Both parties confirmed that verbal notice of a rent increase was given by the landlord to the tenants. The tenants have argued that they were never served a proper notice of rent increase for the disputed amounts to begin January 1, 2018, yet paid those amounts to the landlord for an 8 month period. The landlord provided direct testimony contradicting the tenants and stated that an early notice via text was given to the tenants which was followed by a written notice of a rent increase served in September 2017 for January 1, 2018. I prefer the evidence in this case of the landlord over that of the tenants. The tenants confirmed that they had accepted the rent increase notice and paid it beginning January 1, 2018. This portion of the tenants' claim is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

Both parties confirmed in their testimony that the landlord retains the \$600.00 security and the \$200.00 pet damage deposits. Both parties confirmed the tenants provided their forwarding address in writing for the return of the security and pet damage deposits on September 1, 2018 when the tenancy ended. The landlord provided undisputed testimony that permission was not granted by the tenants to retain the combined deposits. The landlord also provided undisputed testimony that an application for dispute of returning the combined deposits was not made within the allowed timeframe.

The landlord had stated that the deposits were not returned due to the landlord's issues regarding the condition of the unit at the end of tenancy. As such, I find that the tenants have established a claim for return of the \$600.00 security and the \$200.00 pet damage deposits totalling \$800.00. I also find that in failing to comply with the Act, the landlord is also required to pay compensation equal to the \$800.00 pursuant to section 38 (6) of the Act.

The tenants having been substantially successful are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,700.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced 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: June 4, 2019

Residential Tenancy Branch