



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord attended the hearing with his spouse who acted as agent for the landlord and gave affirmed testimony. Two of the 3 named tenants also attended and each gave affirmed testimony, and the tenants called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and give submissions.

No issues with respect to exchange of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The first tenant (PR) testified that the tenants are himself, his mother and his father and that he was a tenant since the beginning of the tenancy.

This month-to-month tenancy began on June 1, 2017 and ended on May 31, 2019. Rent in the amount of \$800.00 per month was originally payable on the 1st day of each month, however the landlord increased rent to \$1,000.00 effective September 1, 2018 without giving a Notice of Rent Increase.

Rent was due on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resided in the upper level of the home.

The tenant further testified that the landlord has not served the tenants with an Application for Dispute Resolution claiming the security deposit and none of the tenants agreed in writing that the landlord could retain any portion of it. Further, none of the tenants agreed in writing that the landlord could increase rent by \$200.00 per month. The landlord gave the tenants no choice; it was pay up or move out.

The second tenant (RR) testified that about a month to 5 weeks ago he dropped off a letter, taping it to the front door of the landlord's home, which contained the tenants' forwarding address in writing. The tenant made a video to prove that it was done and a copy has been provided for this hearing.

No move-in or move-out condition inspection reports were completed.

The tenant's witness (JR) is another son of the tenants and testified that he took the video of the landlord picking up the letter containing the tenants' forwarding address. The Application for Dispute Resolution was served on June 21, 2019, and then on September 17, 2019 copies of text messages were also provided to the landlord. The witness also provided the landlord with a forwarding address in a text message.

The landlord later served the tenants with an envelope at their new address which contained a note stating that the tenants owed the landlord money for plumbing, among other things.

The landlord's agent is the spouse of the landlord and testified that when the parties first agreed to a tenancy, they talked about how many people would be living in the rental unit and the landlord's agent was told there would only be the husband and wife. On the second day of the tenancy the tenants asked for the internet password and for cable, but that was not agreed to be included in the rent. However, the landlord added cable and internet for the tenants at no cost.

On June 5, 2017, the same month that the tenancy began, the landlord received a letter from Shaw Cable saying someone had illegally used the internet and that that landlord would be fined \$5,000.00. The landlord's agent talked to the tenant who said that her son was using it but wouldn't use it anymore. That's when the landlord found out that the tenants' son was also living there. The tenants said they needed him to live there, and the landlord's agent agreed to that, but that commencing September 1, 2018 rent would be increased.

The parties only had verbal agreements, and nothing in writing. The tenants notified the landlord on May 23, 2019 that they were moving out. The tenants' son moved out on May 3 and the tenants (the parents) moved out on May 26. Keys were returned to the landlord on May 30, 2019.

The landlord's agent further testified that more than 2 weeks after the tenants moved out, the landlord received a text message containing the tenant's forwarding address. That was on or about June 15, 2019.

The tenants left damages and cleaning to be done. Photographs have been provided.

The landlord re-rented the rental unit effective July 1, 2019 at \$1,200.00 per month.

Analysis

Firstly, a landlord may not increase rent unless the landlord has served the tenant with a Notice of Rent Increase and follows the regulations. In this case, there is no question that a Notice of Rent Increase was not served. Even if a landlord claims or finds out that an additional occupant is residing in the rental unit, the landlord has other remedies, one of which is not increasing rent. Since there is no question that the landlord raised the rent contrary to the law, I find that the tenants have established a claim of \$200.00 for each of the months of September, 2018 through May, 2019 for a total of \$1,800.00.

With respect to the security deposit, the *Residential Tenancy Act* requires a landlord to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make and serve the tenant with a Application for Dispute Resolution claiming against the deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

Providing a forwarding address by text message is not sanctioned by the *Act*. Also, providing a forwarding address in an Application for Dispute Resolution does not meet the criteria for doubling.

A security deposit belongs to the tenant, and given that the landlord has not made an Application for Dispute Resolution and clearly has an address of the tenants, I find that the landlord is holding \$400.00 in trust contrary to the law.

In the evidence, I am satisfied that the tenants have established a claim of \$1,800.00 for rental overpayments and \$400.00 for return of the security deposit.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,300.00.

This order is final and binding and may be enforced.

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 01, 2019

Residential Tenancy Branch