



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FFT

Introduction

On August 17, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for money owed or compensation for damage or loss; for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant and Landlord appeared at the hearing. The hearing process was explained, and the Tenant and Landlord were asked if they had any questions. The Tenant and Landlord provided affirmed testimony and were provided the opportunity to present their 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.

Preliminary and Procedural Matters

Both parties testified that they did not serve the other party with a copy of their documentary evidence. Since the evidence was not exchanged and the parties are not aware of the evidence before me and did not have an opportunity to consider and respond to it, the Tenant’s and Landlord’s documentary evidence was not considered.

Issues to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss?
- Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Tenant and Landlord testified that the tenancy began on June 1, 2015, on a month to month basis and ended on May 31, 2019. Rent in the amount of \$1,300.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00 and a pet damage deposit of \$600.00. The Landlord testified that he is still holding the deposits.

Illegal Rent Increase

The Tenant testified that the Landlord increased the rent in November 2018 without providing the proper written notice and for an amount that is greater than the amount permitted by the legislation. The Tenant testified that she paid the Landlord an additional \$100.00 each month for a seven-month period. The Tenant is seeking to recover the overpayment of \$700.00.

In reply, the Landlord testified that he asked the Tenant to pay an extra \$100.00 each month and she agreed. The Landlord testified that the Tenant could have said no. The Landlord confirmed that he did not issue the Tenant a proper notice of rent increase form.

Compensation for Eviction \$2,600.00

The Tenant testified that the Landlord sent her a text message telling her to move out because he will be moving into the rental unit. The Tenant testified that she did not receive a proper notice to end tenancy form from the Landlord. The Tenant testified that she moved out of the rental unit approximately two months later on May 31, 2019.

The Tenant is seeking compensation in the amount of \$2600.00 which amounts to two months rent.

In reply, the Landlord provided testimony confirming that he asked the Tenant to vacate the rental unit so that he could move in. The Landlord testified that he never issued the Tenant a proper notice to end tenancy in the approved form.

Security Deposit and Pet Damage Deposit

The Tenant testified that the Landlord did not return the security deposit and pet damage deposit to her after the tenancy ended.

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

The Tenant testified that she provided the Landlord with their forwarding address in writing on two occasions. The Tenant referred to a letter she sent the Landlord dated July 25, 2019 which provided her forwarding address.

The Tenant testified that the Landlord did not return any amount of her deposits. The Tenant is seeking the amount of \$2,400.00 which is double the amount of the security deposit and pet damage deposit.

In reply, the Landlord provided testimony that he received the Tenant's forwarding address but did not return any amount of the deposits because the Tenant left the unit unclean and damaged. The Landlord testified that he did not file an application for dispute resolution making a claim to keep the deposits.

Analysis

Residential Tenancy Policy Guideline # 37 Rent Increases provides the following information:

A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. The tenant's rent can only be increased once every 12 months.

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Section 43(5) of the Act provides that 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.

Section 44 of the Act provides that a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

- (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
 - (ii) section 46 *[landlord's notice: non-payment of rent]*;
 - (iii) section 47 *[landlord's notice: cause]*;
 - (iv) section 48 *[landlord's notice: end of employment]*;
 - (v) section 49 *[landlord's notice: landlord's use of property]*;
 - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
 - (vii) section 50 *[tenant may end tenancy early]*;
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

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.

Section 38 (6) of the Act provides that if a Landlord does not comply with subsection (1), the Landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

Rent Increase

I find that the Landlord increased the rent without issuing the required Notice of Rent Increase as required under section 42(3) of the Act. The Tenants payment of the \$100.00 rent increase does not constitute agreement of the rent increase. In accordance with section 43(5) of the Act the Tenants may deduct the increase from rent or otherwise recover the increase. The Tenant was not required to pay the \$100.00 rent increase.

I award the Tenant the amount of \$700.00 for payment of an illegal rent increase.

Compensation for Eviction

Landlords and Tenants are expected to understand their rights and responsibilities under the Act. I find that the tenancy did not end in accordance to section 44(a) of the Act due to the Landlord issuing a notice to end tenancy.

I find that the Tenant was under no legal obligation to vacate the rental unit. The Tenant is not entitled to compensation pursuant to section 49 of the Act because a Two Month Notice to End Tenancy for Landlord Use of Property was not issued by the Landlord. I find that the tenancy ended in accordance with section 44(d) of the Act when the Tenant vacated the rental unit on May 31, 2019.

The Tenants claim for compensation of two months rent is dismissed without leave to reapply.

Security Deposit and Pet Damage Deposit

I find that the Tenant provided her forwarding address to the Landlord on May 31, 2019 and provided it again via letter dated July 25, 2019. The Landlord did not apply for dispute resolution within 15 days of receiving the Tenant's forwarding address.

I find that there was no written agreement from the Tenant that the Landlord could retain the security deposit and/or pet damage deposit.

If the Landlord wanted to keep the security deposit and /or pet damage deposit due to damage, the Landlord was required under the legislation to make a claim against the deposits within 15 days.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit and pet damage deposit. I award the Tenant the amount of \$2,400.00.

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 paid to make application for dispute resolution.

The Tenant has established a monetary claim in the amount of \$3,200.00. I order the Landlord to pay the Tenant the amount of \$3,200.00. I grant the Tenant a monetary order in the amount of \$3,200.00. 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 Landlord failed to return the security deposit and pet damage deposit to the Tenants in accordance with the legislation. The Tenant is granted double the amount of the security deposit and pet damage deposit.

The Landlord issued an illegal rent increase. The Tenant is granted recovery of the over payment of rent.

I grant the Tenant a monetary order in the amount of \$3,200.00.

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: December 24, 2019

Residential Tenancy Branch