



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 23, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit;
- A monetary order for compensation for loss or other money owed.

Both the Landlord and the Tenant attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence, and took no issue with the service of these documents. The Landlord confirmed receipt of the Tenant's Notice of Hearing and amendment.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to 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.

The landlord was reminded that this was not an application for him to recover money for damage to the rental unit, as he did not file his own application.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return the security deposit or pet damage deposit?
2. Is the Tenant entitled to compensation for loss or money owed?

Background and Evidence

Both parties agree that the tenancy started on April 15, 2010, and rent was set at \$500.00. The Landlord holds a security deposit in the amount of \$250.00, and does not hold a pet deposit. Rent was due on the 15th of each month. The Tenant moved out of the rental unit on June 15, 2019, after he was issued a 2-Month Notice to End Tenancy for Landlord's Use.

The Tenant stated that he received a verbal notification on December 15, 2017, from the landlord that he would be increasing the rent from \$500.00 to \$600.00 as of December 15, 2017. The Tenant stated he was never given any formal written notice of rent increase. The Tenant stated he did not become aware this was improper until his relationship started to sour with the Landlord at the end of the tenancy and he started reading the Act. The Tenant stated that he found out at that time that the rent increase he received was not done in accordance with the Act. The Tenant stated that he never agreed to the rent increase, verbally or otherwise, and felt he had to pay it in order to keep living there. The Tenant is seeking the return of \$100.00 per month over a period of 18 months, from December 2017, until the tenancy ended.

The Landlord agrees that he verbally increased the rent on December 15, 2017, but he stated that the Tenant was okay with it, since it had been many years without any rent increases. The Landlord stated that the Tenant paid the rent increase for 1.5 years without complaining. The landlord also stated that the Tenant left the rental unit messy, which is why he did not return the deposit.

The Tenant is seeking the return of his \$250.00 security deposit. The Tenant provided, and the Landlord confirmed that he received the Tenant's forwarding address in writing on July 5, 2019. The Landlord confirmed that he did not file an application for dispute resolution, and he did not return the deposit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

The parties agreed that the tenancy ended on June 15, 2019. Also, the Landlord confirmed that he got the Tenant's forwarding address in writing on July 5, 2019, in person.

I note the parties never reached any formal agreement about any deductions from the security deposit. Neither party presented any evidence with respect to extinguishment of the other party's right to claim against the deposit. As such, I find there is no evidence that either party extinguished their right to claim against the deposit.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from receipt of the forwarding address in writing (until July 20, 2019) to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did not return the deposit in full nor did he file an application for dispute resolution and I find the Landlord breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenant is entitled to recover double the amount of the security deposit (\$250.00 x 2).

Next, I turn to the Tenant's request to recover money based on his illegal rent increase.

Part 3 (Sections 40 through 43) of the *Act* and Part 4 (Sections 22 and 23) of the *Regulations* provide for rent increases. The *Act* provides that any rent increase must be accomplished by the landlord serving the tenant with a Notice of Rent Increase form and serving it to the tenant at least three months before the rent increase is to take effect. The *Act* also provides that the rent must not be increased by more than the allowable "annual rent increase" unless the landlord has the tenant's written consent or the authority of an Arbitrator pursuant to an Application for Additional Rent Increase.

There is no evidence that there was any written consent that the Tenant agreed to the rent increase. Further, it is undisputed that the Landlord did not issue any written Notice of Rent Increase. He acknowledged that he notified the Tenant verbally, and with little notice.

The Tenant seeks to claim back the additional amount he paid to the Landlord for the illegal rent increase which is \$100.00 per month over a period of 18 months.

The Tenant denies that he ever agreed to the rent increase. The Landlord disagreed and said the Tenant agreed to it and paid it without issue for 1.5 years. However, I note there is no evidence that a formal agreement was ever reached, such that I could find the Tenant explicitly agreed to the increase. I note the Tenant did not become aware of the rules around rent increases until he started looking into the rules and regulations for other matters. Overall, I find there is insufficient evidence that the Landlord had legal authorization or the Tenant's written consent for the rent increase and the Landlord failed to issue a proper Notice of Rent Increase form. As such, the Landlord failed to comply with the Act with respect to the \$100.00 rent increase the landlord started collecting as of December 2017.

Section 43(5) of the Act states 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. Since the additional rent increase was non-compliant with the Act, I find the Tenant has overpaid rent by \$1,800.00 over a period of 18 months. I find the Tenant is entitled to recover those overpayments pursuant to the Act.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was largely successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I find the Tenant is entitled to a monetary order as follows:

- Double the security and pet deposit $\$250.00 \times 2 = \500.00
- Rent Overpayment, as above, \$1,800.00
- Filing fee - \$100.00

Total: \$2,400.00

Conclusion

The Tenant is granted a monetary order pursuant to Section 38 and 67 in the amount of **\$2,400.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: January 23, 2020

Residential Tenancy Branch