



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of double the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties confirmed receipt of the other Party’s evidence. The Tenant confirms that although the Landlord’s evidence was given late the Tenant has reviewed the evidence, does not require more time to respond to that evidence and is prepared to proceed with the hearing. The Tenant confirms that Tenant AB is her son and was living in the unit with the Tenant but is not named as a tenant on the tenancy agreement.

On February 10, 2020 the Tenant made an application to amend the application for an increased amount of compensation. The Tenant confirms that this claim for added compensation is in relation the Landlord’s notice to end tenancy for landlord’s use.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be

dismissed with or without leave to reapply. As the claim in relation to the Landlord's notice to end tenancy for landlord's use is in relation to a different subject matter than the return of the security deposit or the claim in relation to a rent increase, I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to compensation for a rent increase?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement stated on August 1, 2014 and ended on October 31, 2019. Rent started at \$1,500.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit. The Landlord received the Tenant's forwarding address on November 1 or 2, 2019. The Landlord returned \$1,500.00 to the Tenant by registered mail post marked December 12, 2019.

The Tenant states that the Landlord did not return the security deposit within the time allowed and claims return of double the security deposit. The Landlord states that the security deposit was not returned sooner as the Tenant had left damages to the unit and the Landlord was considering keeping the deposit for those damages.

The Tenant states that on or about July 2017 the Landlord verbally informed the Tenant that the rent was increased to \$1,700.00 effective August 1, 2017. The Tenant states that this rent increase was paid. The Tenant states that at the time of the increase the Tenant was not aware of the restrictions on the amount of increases allowed under the Act. The Tenant states that it always paid rent in cash and that the Landlord did not provide any receipts. The Tenant claims compensation of \$2,175.00 being the amount

calculated by the Tenant as being paid to the Landlord over the allowable increase of \$1,555.00.

The Landlord states that the Tenant was not given a rent increase in 2017 and that the Tenant paid \$1,500.00 per month until the rent was increased to \$1,800.00 effective November 1, 2018. The Parties agree that the Landlord increased the rent to \$1,800.00 effective November 1, 2018 by giving the Tenant a notice of rent increase form from the Residential Tenancy Branch (the "RTB") dated September 18, 2018. The Parties agree that the form indicates that the rent was increased to \$1,800.00 from \$1,700.00. The Landlord states that the Tenant had verbally agreed that it could handle rent of \$1,800.00 so in order to increase the rent to this amount the Landlord based the increase on \$1,700.00. The Landlord states that it does not know if the \$100.00 rent increase was an allowable amount.

The Tenant states that the Landlord is not telling the truth and that the Tenant has banking records to show the rent payments of \$1,700.00. The Tenant confirms that these records were not provide as evidence. The Landlord confirms that it did not provide any banking or accounting documents as evidence.

Analysis

Section 38 of the Act provides 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the undisputed evidence that the Landlord received the Tenant's forwarding address on November 2, 2019 at the latest I find that the Landlord had until November 17, 2019 to either return the security deposit or make an application to claim against it. Based on the undisputed evidence that the Landlord mailed the security deposit to the Tenant on December 12, 2019 I find that the Landlord did not meet the deadline and must now pay

the Tenant double the security deposit plus zero interest of \$3,000.00. Deducting the \$1,500.00 already returned leaves **\$1,500.00** owed to the Tenant.

Section 42(2) of the Act provides that A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) of the Act provides that a notice of a rent increase must be in the approved form. Section 43(1) of the Act provides that 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.

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.

Given the undisputed evidence that the rent increase form used for the 2018 increase noted the rent was increased from \$1,700.00, I find on a balance of probabilities that the Landlord did verbally increase the rent to \$1,700.00 effective August 1, 2017 contrary to the requirements under the Act and that the Tenant paid this increased amount. As the Landlord did not dispute the Tenant's calculations for the allowable rent increase and as the Tenant has limited its claim to \$2,175.00 as the difference between the allowable rental increase and the given increase to \$1,700.00, I find that the Tenant is entitled to the compensation claimed of **\$2,175.00**.

As the Tenant has been successful with its claims, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,775.00**. As only Tenant MBN is named on the tenancy agreement, I make the monetary order payable only to Tenant MBN.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,775.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 1, 2020

Residential Tenancy Branch