Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of double the $250.00 security deposit for a total of $500.00. The Tenant submitted an Amendment to the Application dated February 28, 2020, in which she increased her monetary claim to include recovery of an illegal rent increase that she said amounted to an overpayment of rent of $4,725.

The Tenant and an advocate for the Tenant, J.A. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only persons to call into the hearing besides the arbitrator were the Tenant and her Advocate, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct, and that the only persons on the call, besides me, were the Tenant and the Advocate.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing, the Application, and the Tenant's documentary evidence. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on December 2, 2019. The Tenant also said she sent the Landlord copies of all her documentary submissions on March 17, 2020, and a final package on April 13, 2020 by registered mail. The Tenant provided Canada Post tracking numbers, as evidence of service. I find that the Landlord was deemed served with the Application, the Notice of Hearing documents and the Tenant's documentary submissions in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

I explained the hearing process to the Tenant and the Advocate and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant

and the Advocate provided their evidence orally and responded to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant provided her email address and the Landlord's mailing address in the Application documents, and she confirmed her understanding that the Decision would be sent to both Parties and any Orders sent to the appropriate Party in this manner.

On February 28, 2020, the Tenant amended her Application by changing the request for a monetary order from $500 to $5,225.00. This includes a request for repayment of an overpayment of rent between April 1, 2016 through November 15, 2018. The Tenant submitted a copy of a Canada Post tracking number, which indicated that the package with the Amendment and documentary evidence was sent to the Landlord on March 17, 2020, and was available for pick up by the Landlord on March 19, 2020. The Landlord did not pick up the package at the post office, and it was sent back to the Tenant.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Landlord was served the with the Tenant's Amendment and related evidentiary documents on March 24, 2020, according to the Act.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Tenant submitted a copy of the tenancy agreement, and she confirmed in the hearing that the periodic tenancy began on June 1, 2014. She said she paid the Landlord a monthly rent of $650.00 at the start of the tenancy, due on the first day of each month. The Tenant confirmed that she paid the Landlord a security deposit of $250.00, and no pet damage deposit.

The Tenant submitted a Mutual Agreement to End a Tenancy form that was signed by

the Parties on September 26, 2018, and in which they agreed that the Tenant would vacate the rental unit by midnight on the 15th day of October 2018. However, in the hearing, the Tenant advised me that the tenancy ended on November 15, 2018, not October 15, 2018. Further, this is consistent with the finding in the decision of another arbitrator dated May 3, 2019.

Return of Security Deposit

In his decision dated May 3, 2019, another RTB arbitrator, C.A., confirmed that the Landlord had received the Tenant's forwarding address as of that hearing date for the return of the security deposit. In his decision, this Arbitrator said:

> The Landlord must deal with the deposit pursuant to section 38 of the Act. The Tenants' application for return of the security deposit is premature, and is dismissed with leave to reapply. The Tenant may re-apply if the Landlord does not claim against or return the deposit in full within 15 days of this decision date.

The Tenant said in the hearing before me that the Landlord had still not returned her $250.00 security deposit, despite the other Arbitrator's decision from over a year ago; therefore, the Tenant states that the Landlord owes her double the amount of the security deposit, pursuant to section 38 of the Act.

Rent Increase Reimbursement

The Tenant amended her Application, which amendment I find was served on the Landlord pursuant to the Act. In this Amendment, the Tenant requests a monetary order for the return of the amount of rent she overpaid, as a result of the Landlord charging illegal rent increases.

The Tenant said that the Landlord overcharged her $150.00 per month for 31.5 months by insisting that the Parties sign a new tenancy agreement. The second, periodic tenancy agreement the Parties signed was dated April 1, 2016, which required the Tenant to pay the Landlord $800.00 per month, rather than $650.00 per month.

The Tenant said that the Landlord asked her to sign a third tenancy agreement that started on August 1, 2018, and which had a monthly rent of $1,200.00. Further, the Tenant said that the Landlord required that her to pay a security deposit of $600.00 with this tenancy agreement; however, the Tenant said she refused to sign this agreement, and she claims only the return of double her $250.00 security deposit; as such, I find

that the Tenant did not pay the increased amount of security deposit required . Further, the Tenant said she refused the additional rent increase and continued to pay $800.00 in rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Return of Security Deposit

The Landlord was provided with the Tenant's forwarding address in an RTB decision dated May 3, 2019, and the tenancy ended on November 15, 2018. Section 38(1) of the Act states the following:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $250.00 security deposit within fifteen days of May 3, 2019, namely by May 18, 2019, or apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that he returned any amount or applied for RTB dispute resolution to claim against the security deposit. Therefore, I find the Landlord has failed to comply with his obligations under section 38(1) of the Act.

Since the Landlord failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit or $500.00. There is no interest payable on the security

deposit. I award the Tenant **$500.00** from the Landlord pursuant to sections 38(6) and 67 of the Act.

Rent Increase Reimbursement

Policy Guideline 37 ("PG #37") addresses rent increases permitted under the Act. PG #37 states that a tenant's rent cannot be increased unless a tenant has been given proper notice in the approved form (RTB form #7), at least three months prior to the increase coming into effect. A tenant's rent can only be increased once every 12 months. This is consistent with Part 3 of the Act, including section 43(1), which states 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.

PG #37 also says:

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.

As set out in section 6 of the Schedule to the Regulation:

> (3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.
>
> (4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

Section 22 of the Regulation states:

> **Annual rent increase**
>
> **22** (1) In this section, **"inflation rate"** means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

(2) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or before December 31, 2018, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate + 2%.

(3) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate

The allowable rent increase for 2016 was 2.9%. The allowable rent increase for 2018 was 4.0%.

The Landlord was allowed to increase the rent in 2016 by 2.9% of $650.00 or $18.85 per month to $688.85. Accordingly, when the Landlord increased the rent to $800.00, he overcharged the Tenants by $131.15 a month from April 1, 2016 to the end of the tenancy on November 15, 2018, or for 31.5 months.

Based on the evidence before me, I find that it was reasonable for the Landlord to have imposed rent increases starting June 1, of 2016 and every year on that date, thereafter; however, the Landlord did not give the Tenant three months' written notice in the approved form on any occasion, and he increased the rent beyond what is allowed by the Regulation. As a result, I find that the rent increases in this situation were invalid and I cancel them.

Section 43(5) of the Act states:

43 (5) 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.

PG #37 states:

If a landlord collects an unlawful rent increase, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected. In those circumstances, the landlord may issue a new three month Notice of Rent Increase, as the original notice did not result in an increased rent.

Based on the above, I find that the Landlord's rent increases to the Tenant were contrary to the Act, Regulation and Policy Guidelines; accordingly, there were no rent increases, so the Landlord overcharged the Tenants by $800.00 - $ 650.00 = $150.00 per month. This illegal rent increase went from April 1, 2016 to November 15, 2018 or 31.5 months, so the Landlord overcharged the Tenant by $4,725.00.

Pursuant to section 67 of the Act, I grant the Tenant a monetary award of **$4,725.00** from the Landlord for overcharging her rent for 31.5 months.

I find that the Tenant is successful in her claim for recovery of double the security deposit in the amount of $500.00 and recovery of an illegal rent increase in the amount of $4,725.00. I, therefore, award the Tenant a total Monetary Order of **$5,225.00**, pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in her Application for recovery of $5,225.00, as the Landlord breached section 38(1) of the Act in not returning the security deposit in compliance with the Act. Further, the Landlord charged the Tenant an illegal rent increase in the amount of $150.00 for 31.5 months. The Tenant is authorized by section 43(5) of the Act to recover this amount from the Landlord,

I grant the Tenant a Monetary Order in the amount of **$5,225.00**, pursuant to section 67 of the Act. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: May 11, 2020

Residential Tenancy Branch