



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, MNRT, 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. A Monetary Order for the return of double the security deposit - Section 38;
2. An Order for the return of personal property - Section 65;
3. A Monetary Order for the cost of emergency repairs - Section 67;
4. A Monetary Order for compensation - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to the return of personal property?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on May 20, 2013. Initial rent of \$1,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. In January 2020 the Landlord emailed the Tenant a notice of a \$40.00 monthly rent increase to be effective May 1, 2020. Prior to May 1, 2020 monthly rent of

\$1,545.00 was payable. The Landlord collected a total rental increase of \$240.00 for the period May 1 to October 1, 2020, inclusive. The Tenant moved out of the unit on October 20, 2020. The Landlord made no offers to conduct a move-out inspection. The Landlord has not returned the security deposit. On March 7, 2021 the Landlord made an application to claim against the security deposit.

The Tenant states that it sent its forwarding address to the Landlord on October 30, 2020. The Landlord states that it received the forwarding address on November 3, 2020.

The Landlord states that the Parties did a mutual walkthrough of the unit at move-in. The Tenant states that no move-in inspection was conducted. The Landlord agrees that no move-in no inspection report was completed by the Landlord. The Landlord states that the rental increase was given before the emergency order was made restricting rental increases.

The Tenant claims \$240.00 as return of the rental increase. The Tenant claims \$1,500.00 as return of double the security deposit. The Tenant withdraws its claims for the costs of emergency repairs and the return of personal property.

Analysis

Section 6(1) of the Residential Tenancy (Covid-19) Order (Ministerial Order M089 made March 30, 2020 and continuing) provides that if a landlord (a) gave a notice of rent increase under the Residential Tenancy Act before the date of this order and the effective date of the rent increase is after the date of this order, the rent increase does not take effect during the period this order is in effect despite the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement.

As the effective date of the notice of rent increase was after March 30, 2020, I find that the rent increase did not take effect for the period May to October 2020 inclusive. The Tenant is therefore entitled to the return of **\$240.00**.

Section 24(2)(c) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if at move-in the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Based on the Landlord's evidence that no move-in inspection report was completed I find that the Landlord's right to claim against the security deposit was extinguished at the onset of the tenancy.

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. Based on the Landlord's undisputed evidence, I find that the Landlord received the Tenant's forwarding address on November 3, 2020. Although the Landlord made an application to claim against the security deposit, given that this application was made in March 2021, I find that the Landlord did not make its application within the time allowed. The Landlord must therefore pay the Tenant double the security deposit plus zero interest of **\$1,500.00**.

As the Tenant's claims have met with success, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,840.00**. The Tenant's withdrawn claims are dismissed.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,840.00**. 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: March 17, 2021

Residential Tenancy Branch