



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

A hearing was convened on December 17, 2020 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

For reasons outlined in my interim decision of January 24, 2021, the hearing was reconvened on April 26, 2021 to consider the merits of the Application for Dispute Resolution.

Service of documents was address in my interim decision of January 24, 2021 and will not be restated here.

As outlined in my interim decision of January 24, 2021, the parties were expected to attend the reconvened hearing in accordance to the hearing notice provided to each party by the Residential Tenancy Branch. Neither party was required to provide notice of the reconvened hearing to the other party.

The hearing on April 26, 2021 commenced at the scheduled start time of 11:00 a.m., in the absence of the Landlord. By the time the teleconference was terminated at 11:15 a.m., the Landlord had not attended.

The Agent for the Tenant who was present at the hearing on April 26, 2021 was given the opportunity to present relevant oral evidence and to make relevant submissions in regard to the issue of jurisdiction. She affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant (with the exception of legal counsel) affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. At the hearing on April 26, 2021, the Agent for the Tenant affirmed she would not record any portion of these proceedings.

Preliminary Matter:

For reasons outlined in my interim decision of January 24, 2021, I have concluded that I have jurisdiction over this tenancy.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to a rent refund?

Background and Evidence:

At the hearing on April 26, 2021 the Agent for the Tenant stated that:

- The Tenant is her mother;
- The tenancy began in 2017;
- The tenancy ended on June 30, 2020;
- The rent at the start of the tenancy was \$3,100.00;
- The Tenant paid a security deposit of \$1,550.00;
- The Tenant paid a \$175.00 deposit for an “alarm bracelet”;
- A condition inspection report was not completed at the start of the tenancy;
- A final condition inspection report was completed on July 09, 2020;
- She provided the Landlord with a forwarding address for the Tenant, in writing, on July 09, 2020;
- The Landlord did not file an Application for Dispute Resolution in which the Landlord applied to retain any portion of the Tenant’s security deposit;
- On August 18, 2020 the Landlord provided her with a cheque, in the amount of \$1,176.90;
- The \$1,176.90 was a security deposit and alarm bracelet deposit refund, less \$250.00 for a sanitation fee, \$52.00 for repairing damage from a curtain rod, \$140.00 for suite cleaning, \$80.00 for carpet cleaning, and \$26.10 for GST;
- The Tenant did not give the Landlord written permission to retain any portion of the security deposit;

- She told the Landlord she would pay for cleaning the suite, and she agrees that the Landlord can retain \$140.00 from the security deposit for cleaning the unit;
- She is seeking the return of double the security deposit because the Landlord did not comply with section 38 of the *Residential Tenancy Act (Act)*;
- On January 01, 2020 the Landlord increased the rent from \$3,100.00 to \$3,193.00;
- The rent increase imposed on January 01, 2020 is a 3% increase, which is greater than that 2.6% increase that was permitted at the time of the increase;
- The Tenant paid the rent increase for the period between January 01, 2020 and June 30, 2020; and
- The Tenant is seeking to recover the difference between the 3% increase imposed and the 2.6% allowable increase, which is a total of \$74.40.

Analysis:

Section 38(1) of the *Act* stipulates 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 either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received, in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit, which is \$3,100.00.

On the basis of the undisputed evidence, I find that the Landlord returned \$1,176.90 to the Tenant on August 18, 2020. I find that this was a refund of \$175.00 for the “alarm bracelet” deposit and the remaining \$1,001.90 was a partial security deposit refund.

On the basis of the testimony of the Agent for the Tenant, I find that the Tenant has agreed to permit the Landlord to deduct \$140.00 from the security deposit for cleaning the rental unit.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. The allowable rent increase for January of 2020 was 2.6%.

On the basis of the undisputed evidence, I find that on January 01, 2020 the Landlord increased the rent from \$3,100.00 to \$3,193.00, which is an increase of 3%. As the Landlord did not have the right to impose a rent increase of 3% on January 01, 2020, pursuant to section 43(1)(a) of the *Act*, I find that the Landlord did not have the right to increase the rent by \$93.00 pursuant to that section.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the *Act*. As I have no evidence that the Landlord has made an application under section 43(3) of the *Act*, I find that the Landlord did not have authority to increase the rent on January 01, 2020, pursuant to section 43(1)(b).

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As I have no evidence that the Tenant agreed to increase the rent on January 01, 2020, in writing, I find that the Landlord did not have authority to increase the rent pursuant to section 43(1)(c).

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the legislation, the tenant may deduct the increase from rent or otherwise recover the increase.

As the Landlord collected an unauthorized monthly rent increase of \$93.00 for the first six months of 2020, I find that the Tenant has the right to recover the entire amount of those rent increases, which is \$558.00. Although the Tenant has not applied to recover the full amount of the rent increase, she is entitled to recover the full amount, pursuant to section 43(5) of the *Act*.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$3,758.00, which includes double the security deposit (\$3,100.00), \$558.00 for a rent increase that does not comply with the legislation, and \$100.00 as compensation for the cost of filing this Application for

Dispute Resolution. This award must be reduced by the \$1,001.90 security deposit refund that was provided to the Tenant on August 18, 2020. The award is further reduced by \$140.00, as the Agent for the Tenant has agreed that amount is due to the Landlord for cleaning.

On the basis of these calculations, I grant the Tenant a monetary Order for \$2616.10. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia 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 *Residential Tenancy Act*.

Dated: April 26, 2021

Residential Tenancy Branch