



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, MNDCT, FFT

Introduction

This hearing was convened in response to an application for dispute resolution made September 8, 2021 with amendments made November 26, and 29, 2021 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order in relation to a disputed rent increase - Section 43
2. A Monetary Order for compensation - Section 67; and
3. An Order for the Landlord’s compliance - Section 62; and
4. 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.

Preliminary Matters

The Landlord confirms receipt of the Tenant’s application for dispute resolution, both amendments, the notice of hearing and all evidence. The Landlord confirms that they provided no supporting evidence for the hearing.

The Tenant confirms that its claim for compensation is actually for return of the security deposit. It is noted that the Tenant’s amendment made November 26, 2021 makes this claim detailing the return of the security deposit.

Issue(s) to be Decided

Is the Tenant entitled to a return of rent paid under a rent increase?

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to an order for the Landlord's compliance?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on June 1, 2017 with rent of \$850.00 or \$825.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit and is currently holding \$825.00 as a security deposit. From the onset of the tenancy until January 3, 2021 the Tenant shared the kitchen with the Landlord who owns the house containing the unit. The Tenant did not share a bathroom with the Landlord. As of January 3, 2021, the Tenant's access to the kitchen was removed and at this time the monthly rent payable was \$950.00. On April 1, 2021 the rent was increased from \$950.00 to \$1,200.00 when the Tenant signed a tenancy agreement for this rental amount. The Landlord did not give the Tenant three months notice of the rent increase and did not serve the Tenant with any notice of rent increase on an approved form.

The Tenant states that they moved out of the unit on October 1, 2021 and on this date also gave the Landlord their forwarding address. The Landlord states that the Tenant moved out close to the end of October 2021 at which time the Landlord received the Tenant's forwarding address.

The Landlord did not return the security deposit or make an application for dispute resolution claiming retention of the security deposit. The Landlord argues that the Act does not apply to the accommodation and that even if it does the Landlord retained the security deposit for cleaning costs and missing items.

Analysis

Section 4(c) of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. Based on the agreed facts that the kitchen was shared with the Landlord who owns the accommodation for the period June 1, 2017 to January 3, 2021, I find that the Act does not apply to the tenancy for that period. However, after January 3, 2021 and continuing to the end of the tenancy and based on the agreed facts that the Tenant was provided living accommodation without sharing the kitchen, I find that the tenancy changed and at this point came under the jurisdiction of the Act.

Section 43(1)(c) of the Act provides that a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing. Section 42 of the Act provides, inter alia, that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and that a notice of a rent increase must be in the approved form. Residential Tenancy Branch (the “RTB”) Policy Guideline #37 provides that the landlord must give the tenant a completed Notice of Rent Increase form at least three months before the effective date of the rent increase. This applies to annual rent increases, agreed rent increases and additional rent increases. 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.

Although it was indicated at the hearing that since the Tenant signed the tenancy agreement for the increased amount the Tenant may not be entitled to a return of the rent increase, upon further consideration of the facts, the Act and the policy guideline I find that the Landlord could not increase the rent, even with the Tenant’s agreement for the amount, without the required notice of rent increase. Based on the undisputed facts that the Landlord did not provide any notice of rent increase I find that the Landlord breached the Act in obtaining the rent increase and that the Tenant is therefore entitled to the return of the rent increase amount. Given the undisputed evidence that the rent was increased from \$950.00 to \$1,200.00 on April 1, 2021 I find that the Tenant is

entitled to return of \$250.00 for each of the months April to September 2021 inclusive for a total of **\$1,500.00** (250.00 x 6 months). I determine this period based on the Tenant's evidence of having ended the tenancy on October 1, 2021.

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. As the tenancy became under the jurisdiction of the Act when the Tenant's access to the kitchen was removed, I find that the return of the security deposit continued to be held by the Landlord after that date, is now also subject to the application of the Act. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address and neither returned the security deposit nor make an application to claim retention of the security deposit I find that the Landlord must now return double the security deposit plus zero interest of **\$1,650.00** (825 x 2) to the Tenant.

As the Tenant made no submissions at the hearing in relation to its claim for an order of compliance, and I note that this claim is only relevant to an ongoing tenancy, I dismiss this claim.

As the Tenant's claims have met with substantial success, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,250.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,250.00**. 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 RTB under Section 9.1(1) of the Act.

Dated: January 26, 2022

Residential Tenancy Branch