



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD Monetary Order for the Return of the Security Deposit and Pet Damage Deposit

MNDC Money Owed or Compensation for Loss or Damage

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord. The tenant was seeking a Monetary Order for reimbursement of a rent increase imposed without proper notification and in excess of that permitted under the Residential Tenancy Regulation, (the Regulation).

Although served by registered mail sent on June 25, 2009 and signed for by the landlord on June 29, 2009, the landlord did not appear.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the double the security deposit of \$350.00, paid at the start of the tenancy on July 31, 2006.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit?

- Did the tenant furnish a forwarding address in writing to the landlord?
- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?
- Was an order issued permitting the landlord to retain the deposit?
- Whether the landlord had incorrectly imposed a notice of rent increase that contravened Part 3 of the Act and Part 4 of the Regulation.
- Whether the landlord had collected additional rent from the tenant pursuant to a notice that did not comply with the Act or Regulation.

The burden of proof is on the applicant.

Background and Evidence

The tenant testified that the tenant had moved into the unit as of July 31, 2006 and paid a security deposit of half a months rent in the amount of \$350.00 at that time. The tenant testified that there was no written tenancy agreement but the parties agreed on rent of \$700.00 per month. The tenant testified that at the end of May 2008, the landlord verbally imposed a rent increase of \$200.00 per month and when the tenant objected, then issued an ultimatum that she pay or move. The tenant testified that the illegal rent increase was paid for ten months until the tenant moved out on May 1, 2009. The tenant testified that, although she provided the landlord with a written forwarding address in May 2009, the landlord refused to refund the security deposit citing damage to a window. The tenant is seeking \$700.00 for double the security deposit and reimbursement for ten months of excessive rent paid at \$200.00 per month amounting to \$2,000.00. The tenant submitted into evidence bank records indicating that, after June 2008, the rental cheques increased from \$700.00 to \$900.00.

Analysis

Security Deposit Claim

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit was \$350.00 with interest of \$11.80 and that under the Act the tenant is entitled to \$711.80, representing \$700.00 double the deposit, plus \$11.80 interest on the original deposit.

Excessive Rent Claim

The Act governs when, how and how much a Landlord may increase the rent. Section 42 (2) of the Act states 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) states that a notice of a rent increase must be in the approved form. Section 43 states that 43 a

landlord may impose a rent increase only up to the amount calculated in accordance with the regulations,

In this instance, I find that the rent was increased unilaterally and not in compliance with the Act in terms of the percentage of the increase, the amount of notice nor the type of notification, which must be on the prescribed form. When illegal rent is charged, section 43(5) of the Act provides the following remedy:

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.

Accordingly, I find that the verbal notice of rent increase issued by the landlord at the end of May 2008, was of no force under the Act nor Regulation and constituted an illegal rent increase. As such, I find that the tenant is entitled to be reimbursed all rent paid in excess of \$700.00, per month amounting to \$2,000.00.

Given the above, I find that the tenant is entitled to total compensation in the amount of \$2,761.80 comprised of \$361.80 refund for the security deposit, \$350.00 for double the deposit, \$2,000.00 refund of wrongfully charge rent over a period of ten months and the \$50.00 fee paid by the tenant for this application.

Conclusion

I hereby issue a monetary order to the tenant in the amount of **\$2,761.80**. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

September 2009

Date of Decision

Dispute Resolution Officer