

## **DECISION**

**Dispute Codes:** *MNDC, DRI, FF*

### **Introduction**

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee. The tenant has also applied to dispute a rent increase. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Since the tenancy has ended, the tenant's application to dispute the rent increase is no longer relevant and accordingly dismissed.

### **Issues to be decided**

Is the tenant entitled to compensation for loss under the *Act* and for the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on March 15, 2009 for a fixed term of one year that ended on March 15, 2010. Thereafter, the tenancy continued on a month to month basis. The monthly rent was \$1,800.00 payable in two equal instalments on the first and fifteenth of each month. The tenant stated that sometime around the middle of February, the landlord informed the tenant that the rent would increase by \$50.00 upon expiry of the fixed term. He also informed the tenant that the house was up for sale and the tenant would be given one month's notice to vacate once the sale was completed.

On March 31, 2010, the landlord served the tenant with a two month notice to end tenancy as he had found a buyer for the home and the buyer had requested that the home be vacant upon completion of the sale.

The tenant found a new place almost immediately and informed the landlord of her intentions to move out by the effective date of the notice to end tenancy. The tenant paid the higher rent for April and May.

The purchasers of the home conducted a home inspection and the home came up short. Accordingly the sale of the home fell through on April 09, 2010 and the landlord informed the tenant of this development on that day. The landlord also offered to reinstate the tenancy, but the tenant decided to move out as planned.

The landlord cashed the tenant's rent cheque for May in the amount of \$1,850.00. On May 23, 2010, the tenant participated in a move out inspection and the landlord returned the tenant's security deposit. However, the landlord refused to give the tenant the equivalent of a month's rent, pursuant to the compensation attached to the s.49 notice to end tenancy.

The tenant is claiming the following:

1.	Return of the rent for the final month of tenancy	\$1,850.00
2.	Rent increase for March and April	\$100.00
3.	Two month's rent for false notice to end tenancy	\$3,700.00
4.	Moving costs	\$644.70
5.	Filing fee	\$100.00
	<b>Total</b>	<b>\$6,394.70</b>

### **Analysis**

Pursuant to section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the landlord served the tenant with a notice to end tenancy under section 49. Therefore, the tenant is entitled to receive the equivalent of one month's rent, even though the sale did not go through as planned.

Accordingly I find that the tenant has established a claim for \$1,850.00 which is the rent that she paid for the last month of tenancy.

The landlord informed the tenant that the rent would be increased following the end of the fixed term of the tenancy. The tenant had the option of disputing the increase by making application for dispute resolution. However, the tenant simply chose to pay it, thereby implying the acceptance of the rent increase. Therefore, I find that the tenant is not entitled to the return of \$100.00 which represents the total amount of the increase in rent that she paid prior to the end of the tenancy.

The tenant is claiming \$3,700.00 for having been served a false notice to end the tenancy. Based on the testimony of both parties, I find that the notice was served in good faith, as the landlord had found a buyer for the home. However, the sale did not go through for other reasons. Therefore, I find that the landlord did not serve a “false notice” as alleged by the tenant. The landlord testified that the home is currently vacant and still up for sale. Accordingly, I dismiss the tenant’s claim for \$3,700.00 as compensation for a “false notice”

The tenant is also not entitled to the cost of moving. Overall, the tenant has established a claim for \$1,850.00. Since the tenant has proven a portion of her claim of \$6,394.70, I will award her \$50.00 towards the filing fee of \$100.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for \$1,900. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenants a monetary order in the amount of **\$1,900.00**.

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: July 12, 2010.

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Dispute Resolution Officer