



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee pursuant to section 72.

The landlord attended the hearing represented by his counsel, PS ("landlord"). The tenant RM attended the hearing, representing both tenants ("tenant"). Both parties were given a full opportunity to be heard, to present affirmed testimony and to make submissions. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence by registered mail on December 15, 2018. Based on his testimony, I find that the landlord was deemed served with the application for dispute resolution in accordance with sections 89 and 90 of the Act.

### Preliminary Issue

At the commencement of the hearing, the landlord sought an adjournment. The landlord advised me that he is new counsel to this file, as his colleague who had conduct of this file unexpectedly left town the previous Thursday. There is additional evidence, salient to this case, that had not been previously provided to the Residential Tenancy Branch ("Branch"), and an adjournment would allow the landlord to provide the additional evidence. The landlord acknowledged that this evidence could have been provided to the Branch within the time limits as set out in the Rule 3.17 of the Residential Tenancy Branch Rules of Procedure by his colleague before he left. The tenant was opposed to the adjournment.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

I refused the landlord's adjournment request pursuant to Rule 7.11. I determined that an adjournment of this case would not assist the parties in resolving the issues. The need for the adjournment was brought about by the neglect of previous counsel to prepare for the hearing, not because previously unavailable evidence had come to light. The landlord himself chose not attend this hearing, thereby preventing him from presenting first-hand testimony. Lastly, if this case were to be adjourned, the adjournment would not lead to any extension of time limits to present further evidence.

#### Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord for:

- increasing the rent contrary to section 43 of the Act,
- ending the tenancy for landlord's use pursuant to sections 50 and 51, and
- failing to accomplish the purpose for which the tenancy was ended pursuant to section 51?

Is the tenant entitled to recover the filing fee pursuant to section 72?

#### Background and Evidence

A copy of the tenancy agreement was entered into evidence. The rental unit is a basement suite in the landlord's home. This month to month tenancy began on January 1, 2016 with rent set at \$875.00 per month payable on the first day of each month subject to rent increases given in accordance with the Act. A security deposit of \$500.00 was collected and returned to the tenant when the tenancy ended on September 18, 2018.

The tenant testified as follows. In July 2017, the landlord verbally advised the tenant that the monthly rent would be raised to \$950.00 commencing October 1, 2017. The tenant started paying \$950.00 per month rent on October 1, 2017 because "rent everywhere else was much higher."

In July 2018 the landlord verbally advised the tenant that monthly rent would be raised from \$950.00 to \$1,100.00 for the month of September 2018 then \$1,200.00 commencing October 1, 2018 and thereafter. The landlord rationalized the increased rent was justifiable because he has a related family from overseas who would pay fair market value for the rental unit.

The tenant disagreed with the increase in an email exchange with the landlord on September 1, 2018 and gave the landlord a cheque in the amount of \$950.00 for the September rent. That same day, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice") with an effective move out date of November 1, 2018. Both the landlord and tenant agree the tenant was not compensated with the equivalent of one month rent.

A copy of the Notice was entered as evidence and the selected purpose for ending the tenancy is: *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The landlord advised the tenant his daughter will be moving into the rental unit.

On September 8, 2018 the tenant notified the landlord he will vacate early on September 18, 2018. On November 24, 2018, the tenant was at the landlord's home to ask for a refund of September 19 – 30<sup>th</sup> rent and one month's rent as compensation from the landlord for ending the tenancy. He also went to the rental unit and spoke to the new tenant. A video of the exchange was entered as evidence. In the video, the new tenant confirms that he moved into the unit on November 1, 2018 and pays \$1,350.00 per month rent.

Counsel for the landlord gave the following submissions. When the rent was verbally raised to \$950.00, the landlord received a text message from the tenant agreeing to the new rate. A copy of the text message was not entered as evidence.

The landlord's daughter originally tried to occupy the unit but found that the commute to her work made it too hard for her to live there. The landlord's brother-in-law arrived from outside of Canada and is currently living with the landlord in the landlord's house. The brother-in-law cannot rent the unit because it is culturally inappropriate to have him as a tenant. The intent for the rental unit is for landlord's sister and family to eventually move in; however the sister has been delayed coming to Canada. Instead of leaving the unit vacant, the landlord decided to rent it out.

### Analysis

#### Rent increase contrary to Part 3 of the Act

Part 3 of the *Residential Tenancy Act* (sections 40 – 43) describes when rent increases are allowed. Section 41 states a landlord must not increase rent except in accordance with Part 3. Section 42(3) of the Act states that a notice of rent increase must be in the approved form. Section 43(1) states a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on application or agreed to by the tenant in writing.

I accept the tenant's undisputed testimony that his rent was verbally increased in an amount greater than what is allowable under Part 3 of the Act. No written notice on the approved form was provided to the tenant and the amount of the increase was greater than what the legislation allows. The landlord never sought an order from the director to increase rent.

Between October 2017 and September 2018, the tenant paid \$75.00 per month greater rent than what is allowable in accordance with part 3 of the Act. **The tenant's rent should have been \$875.00 per month, not \$950.00.** The tenant is entitled to compensation for ~~11~~ **12** months of rent at \$75.00 per month, or ~~\$825.00~~ **\$900.00**.

#### Refund for September 2018 rent

Section 50(2) of the *Act* states that if the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

I accept the tenant's undisputed testimony that ~~he paid \$950.00 for September and~~ the tenancy ended on September 18, 2018 in accordance with section 50(1)(a) of the Act. As the tenant has overcompensated the landlord for 12 days of rent, prorated at **[\$875/30 = \$29.16 per day]** ~~\$31.66 per day~~, I award the tenant ~~\$379.92~~ **\$349.92**

#### One month's rent Compensation pursuant to section 51(1) of the Act

Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.

Both the landlord and tenant agree that the landlord did not compensate the tenant with the equivalent of one month's rent. I award the tenant compensation in the amount of ~~\$950.00~~ **\$875.00**.

#### Twelve month's rent Compensation pursuant to section 51(2) of the Act

I note the landlord provided the Notice to the tenant on the same day the tenant protested two rent increases. The landlord provided no documentary evidence of the

daughter occupying the unit for any time and did not have the landlord's daughter or the landlord available to testify.

Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy] addresses the requirement for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of the property and does not follow through and use the property as stated on the Notice. Part C is reproduced below:

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only).

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances. The arbitrator has no authority to vary or alter the amount of compensation. (emphasis added)

If a landlord gives a notice to end tenancy under section 49 to occupy or have a close family member occupy the rental unit, the landlord or their close family member must take steps to occupy the unit after the effective date of the Notice. The consequences for not using the rental unit for the stated purpose are expressed in section 51(2) of the Act.

The effective date of the notice was November 1, 2018. In order to comply with section 51(2)(b) of the Act, the landlord or a close family member must occupy the unit for at least 6 months, or until May 1, 2019. Section 49(1) of the Act defines close family member as, in relation to an individual, (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

The landlord submits that the eventual occupant of the rental unit is going to be the landlord's sister and her family. The landlord's sister does not meet the section 49(1) definition of a close family member. The tenant provided compelling evidence that the current occupant of the rental unit is a new tenant and the landlord does not dispute this.

As the landlord has not demonstrated that he took steps to accomplish the stated purposes for ending the tenancy within a reasonable time after the effective date of the Notice, the tenant is entitled to compensation pursuant to section 51(2) of the Act. I award the tenant 12 months rent at the rate of ~~\$950.00~~ **\$875.00** per month for an award of ~~\$11,400.00~~ **\$10,500.00**.

Filing Fee

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item		Amount
Rent increase contrary to Part 3 of the Act	<del>\$825.00</del>	<b>\$900.00</b>
Refund for September 2018 rent	<del>\$379.92</del>	<b>\$349.92</b>
One month's rent compensation	<del>\$950.00</del>	<b>\$875.00</b>
Twelve months rent compensation	<del>\$11,400.00</del>	<b>\$10,500.00</b>
Filing fee		\$100.00
Total Monetary Order	<del>\$13,654.92</del>	<b>\$12,724.92</b>

Conclusion

I order that the tenant is entitled to a monetary order in the sum of ~~\$13,654.92~~ **\$12,724.92**. I order that the landlord(s) pay this sum forthwith.

The tenant is provided with an Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial 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: February 13, 2019

DECISION/ORDER AMENDED  
PURSUANT TO SECTION 78(1)(A)  
OF THE RESIDENTIAL TENANCY  
ACT ON APRIL 18, 2019 AT THE  
PLACES INDICATED IN **BOLD**

Residential Tenancy Branch