



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, MNR, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent and for the filing fee. The tenant applied for compensation pursuant to a notice to end tenancy for landlord's use of property and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be Decided**

Is the landlord entitled to unpaid rent and to the recovery of the filing fee? Is the tenant entitled to compensation and to the recovery of the filing fee?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started in July 2015. The landlord purchased the rental property in June 2018 and the tenant was already in occupation of the rental unit. At the time the landlord purchased this property the tenant was paying \$750.00 in rent payable on the first of the month.

On July 30, 2018, the landlord served the tenant with a notice of rent increase in the amount of \$185.00 to be effective on October 01, 2018. The landlord stated that he recognized that the rent increase was not in keeping with legislation and therefore agreed to give the tenant a rebate of \$85.00 for a period of six months, thereby making the rent \$850.00 effective October 01, 2018. On April 01, 2019 the rebate would end, and the rent would be \$935.00.

The tenant did not dispute the rent increase and effective October 01, 2018, the tenant paid rent in the amount of \$850.00. On April 01, 2019, the landlord demanded the extra \$85.00 per month and the tenant objected to the increase and refused to pay the additional \$85.00. On April 15, 2019 the landlord served the tenant with a two month notice to end tenancy for landlord's use of property effective June 30, 2019. The reason for the notice was that the landlord or a close family member of the landlord intended to move into the rental unit.

The tenant did not dispute the notice and on April 20, 2019, she gave the landlord a written notice to end tenancy effective May 30, 2019. The tenant agreed that she received compensation of one month of rent-free stay for May 2019.

The landlord stated that the tenant did not move out until the afternoon of June 01, 2019 and therefore he designated June as the rent-free month. According to the landlord the tenant owes rent for May 2019 in the amount of \$935.00 plus \$85.00 for April because she paid \$850.00 instead of the increased rent of \$935.00. The landlord has applied for a monetary order in the amount of \$1,020.00 plus \$100.00 for the filing fee.

The tenant testified that shortly after she moved out the landlord advertised the availability of the rental unit on-line, at a rent of \$1,000.00, effective September 01, 2019. The tenant filed copies of the advertisements. The landlord agreed that he had placed the advertisements on line but stated that he had done so for the purpose of researching the amount of rent he could get. He stated that he intended to use the property as his secondary residence as he continued to live in his primary residence. The landlord also stated that he intended to rent the unit out during winter. The landlord testified that his furniture is in the rental unit, he visits the unit daily and as of the date of this hearing, the unit was not rented out.

## **Analysis**

### **Landlord's application**

The landlord stated that the tenant moved out on June 01, 2019 and therefore she is responsible for rent for June. The landlord also agreed that pursuant to the notice to end tenancy for landlord's use of property, the tenant is entitled to one month of rent-free stay and he considers June as the month of rent-free stay.

Based on the above the landlord is claiming rent for May 2019 (\$935.00) and the rent increase (\$85.00) that became effective on April 01, 2019 for a total claim of \$1,020.00.

I find that the landlord served the tenant with a rent increase which was far beyond the legislated increase of 2.5% in 2019. In addition the landlord had already increased the rent in October 2018 by a percentage that was also in excess of the legislated increase. In her written submission, the tenant stated that she felt intimidated and paid the initial increase without applying for dispute resolution. The landlord stated that he was aware that he had increased rent by an amount that did not comply with legislation and accordingly gave the tenant a rent rebate of \$85.00 for six months. Since the landlord imposed a second rent increase six months later, that does not comply with legislation, I find that the landlord's claim for \$85.00 for the month of April must be dismissed.

As per the tenancy agreement, rent is due on the first and accordingly the tenant had up to 1:00pm on June 01, 2019 to move out. Based on the notice to end tenancy, the tenant was entitled to a month of rent-free stay which she availed of for the month of May 2019. The landlord's claim for rent for May 2019 is dismissed. Since the landlord has not proven his case, he must bear the cost of filing his application.

#### Tenant's application

Based on the documents filed into evidence and on the testimony of both parties, I find that the landlord served the tenant with a notice to end tenancy for landlord's use of property. The reason for the notice as check marked on the notice to end tenancy is that the landlord or a close family member intended to move into the rental unit. The landlord agreed that neither he nor a close family member have moved into the rental unit but stated that he does visit the unit on a regular basis. The landlord also agreed that he listed the property for rent shortly after the tenant moved out of the rental unit.

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

In addition to the amount payable under subsection (1), if

- (a) Steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) The rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

Based on the testimony of the landlord and the documents filed into evidence, I find on a balance of probabilities that it is more likely than not that the landlord or a close family member did not intend to move into the rental unit. The landlord testified that he intended to rent the unit to other prospective tenants during winter. The advertisements also mentioned a rent of \$1,000.00 which is much more than what the tenant was paying.

Accordingly, by advertising the availability of the rental unit, I find that the landlord took steps that would prevent him from accomplishing the stated purpose for ending the tenancy under section 49 and therefore he must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement. The monthly rent was \$850.00 and therefore the landlord must pay the tenant \$10,200.00 as compensation. Since the tenant has proven her case, she is also entitled to the filing fee of \$100.00.

Overall the tenant has established a claim of \$10,300.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents 12 months' rent plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$10,300.00**.

The landlord's application is dismissed in its entirety.

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: October 16, 2019

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Residential Tenancy Branch