



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On July 9, 2019, the Tenant applied for a Dispute Resolution proceeding seeking monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail and the Landlord confirmed that he received this package in July 2019. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Was an illegal rent increase imposed contrary to the *Act*?
- Is the Tenant entitled to monetary compensation?

- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties did not know when the tenancy started but agreed that it was approximately seven or eight years ago, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on June 7, 2019. Rent was established at \$1,200.00 per month, due on the first of each month. A security deposit of \$450.00 was paid. A written tenancy agreement was not created, contrary to the *Act*.

The Tenant advised that the rent at the beginning of the tenancy was set at \$900.00 per month and he paid this amount for seven years. In March 2018, he stated that the Landlord approached him with an ultimatum that he must pay more rent, or he will be evicted. He did not inquire about his tenancy rights, and as the rental market did not have suitable accommodations in the same price range, he just paid this rent increase as of May 2018. Approximately four to five months later, he spoke with the Residential Tenancy Branch and realized that the Landlord was not permitted to raise the rent more than the allowable percentage for that particular year. He did not raise this as an issue for fear of being evicted, so he paid \$1,200.00 per month from May 2018 until the end of the tenancy. As such, the Tenant is seeking compensation in the amount of **\$3,900.00** for the 13 months of overpayment of rent from May 2018 to May 2019.

The Landlord advised that he had a good relationship with the Tenant and as the rental unit was getting old, updates needed to be made. However, he could not afford to hire a contractor to make any repairs. He had a conversation with the Tenant's ex-wife and mentioned that he might have to move back into the rental unit because he could not afford the maintenance and she stated that she would talk to the Tenant about potentially buying the property. He then stated that he never spoke to the Tenant about a rent increase and never gave him a notice of rent increase, but the Tenant came to his work and offered to pay \$1,200.00 per month in rent. He was under the impression that the Tenant would eventually purchase the property using some of his WCB claim to do so.

The Tenant restated that the Landlord came to the rental unit at the end of March 2018, with a Two Month Notice to End Tenancy for Landlord's Use of Property in his hand and said that rent must be increased to \$1,200.00 per month or else he would have to serve the notice. He was asked to accompany the Landlord to his office where the amount of the rent increase was discussed.

The Landlord denied that they had any such meeting and there was never a discussion of rent. He speculated that the offer of \$1,200.00 per month was the Tenant's estimated determination of what would be enough to ensure that this notice would not be served.

In addition to the rent increase claim, the Tenant advised that the Landlord eventually served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on April 11, 2019 and the reason the Landlord checked off on the Notice was because "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 indicated on the Notice that the effective end date of the tenancy was July 1, 2019.

Both parties agreed that the Tenant gave 10 days' written notice to end his tenancy early on May 29, 2019 effective for June 7, 2019. The Tenant advised that he is entitled to one month's compensation after being served with this Notice, but the Landlord did not compensate him. The Tenant stated that as he lived in the rental unit until June 7, 2019, he is seeking compensation in the amount of **\$920.00** for the remaining three weeks of rent owed pursuant to the compensation requirements of Section 51 of the *Act*.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

The first claim I will address is with respect to the Tenant's claim pertaining to the Notice. I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Tenant's claim for one month's compensation owed to him when he was served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

**51** (1) *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.*

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

During the hearing, the Landlord stated that he did not know why the Tenant was entitled to one month's compensation and stated that he did not read the compensation requirements on the Notice after he served it. As discussed during the hearing, the undisputed evidence is that the Tenant was entitled to one, full month's compensation pursuant to this Notice. As the Tenant occupied the rental unit for the first week of June 2019, the Landlord still owes the Tenant compensation in the amount of one, full month's rent under the Notice. As such, I grant the Tenant a monetary award in the amount of **\$920.00** comprising of the balance of the one month's rent owed pursuant to the *Act* after service of this Notice.

The second claim I will address is with respect to the issue of the alleged illegal rent increase. Section 41 of the *Act* stipulates that the Landlord may only increase rent if he complies with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenant's rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenant notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenants in writing.

In addition, I find it important to note that Policy Guideline # 37 outlines the following with respect to allowable rent increases:

A tenant may agree to, but cannot be required to accept, a rent increase that is

greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

When reviewing the evidence and testimony before me, I am satisfied that rent was paid in the amount of \$1,200.00 per month as of May 2018. However, the Tenant and Landlord have provided contradictory accounts of what transpired with respect to the details of how this increased payment of rent came about. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, I must turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

While the Landlord submitted that the Tenant one day came to his office, unsolicited, and voluntarily offered to pay an arbitrary amount of increased rent, I find this submission to be contrary with common sense and ordinary human experience. This alleged scenario does not seem to be plausible, logical, or likely. Furthermore, the Tenant advised that the Landlord initiated a meeting regarding a rent increase and was threatened with potentially being evicted. While the Landlord denied ever having such a meeting with the Tenant about a rent increase, when the Landlord testified about how the Tenant would have established what amount of rent increase to pay in his proposed scenario where the Tenant came to his office, the Landlord stated that it was his speculation that this amount would have been sufficient enough to prevent a notice from being served. I find that the Landlord's acknowledgement that there was a notice present supports the Tenant's submission that the Landlord approached him and threatened him with a notice to end tenancy should a rent increase not be paid.

When reviewing the totality of the evidence on a balance of probabilities, I am satisfied that the Landlord, more likely than not, initiated an illegal rent increase, contrary to the requirements of the *Act*.

With respect to the Tenant's claim for compensation regarding this rent increase, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Based on the above, I am satisfied that the Landlord collected an illegal rent increase. While the Tenant paid \$1,200.00 per month for the rest of the tenancy, I find it important to note that he discovered that this rent increase was illegal four of five months after it started. The last component in establishing if monetary compensation should be awarded is mitigation or minimization of any loss. As the Tenant acknowledged that he was informed of his rights four of five months after the Landlord breached the *Act*, but he chose to do nothing about it at the time, I am satisfied that the Tenant did not mitigate or minimize this loss. As such, I find that the Tenant sufficiently established a monetary award in the amount of \$300.00 per month for the five months of rent only, totaling **\$1,500.00**.

As the Tenant was partially successful in his claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Compensation pursuant to Section 51	\$920.00
Illegal rent increase compensation	\$1,500.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$2,520.00</b>

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$2,520.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order 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: October 28, 2019

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Residential Tenancy Branch