



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords and tenant T.D. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the tenants served the landlords with their application for dispute resolution and some evidence via registered mail. I find that the above documents were served in accordance with section 88 and 89 of the *Act*.

The tenant testified that he served the landlords with a second evidence package via regular mail sometime in early January 2022. No proof of service documents were

entered into evidence. The landlords testified that they did not receive the tenant's second evidence package.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the tenant has not proved, on a balance of probabilities, that the landlords were served with the second evidence package because no proof of service documents were entered into evidence and the landlords testified that they did not receive it. The tenants' second evidence package is therefore excluded from consideration.

Both parties agree that the landlords served the tenants with their evidence via registered mail. I find that the landlords' evidence was served in accordance with section 88 of the *Act* and is therefore accepted for consideration.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began a few days before June 1, 2018, and ended on February 28, 2021. Rent at the start of this tenancy was

\$1,500.00 due on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that on or around May 23, 2020, the landlords served the tenant with a Notice of Rent Increase via registered mail in the amount of \$39.00 effective September 1, 2020. In concert with the Notice of Rent Increase, the landlords emailed the tenants. The email was accepted for consideration and states:

Dear [tenants],

This is formal notification of a rent increase by \$39.00 effective Sept 1, 2020 or as soon as the State of Emergency is declared over; which ever comes later.

Total rent of \$1539.00 will be due on the first of the month and every month thereafter.

Both parties agree that the tenants paid the rent increase from September 1, 2020 to February 1, 2021. The landlords testified that since the State of Emergency did not end in September of 2020 the tenants were under no obligation to pay the rent increase. The landlords testified that the tenants chose to pay the rent increase and only complained about it after they moved out and are not entitled to its return.

Tenant T.D. testified that the landlords were not permitted to collect the rent increase and the tenants are therefore seeking to recover the \$39.00 per month paid from September 2020 to February 2021 totalling \$234.00.

Both parties agree that the landlords served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") via registered mail in January of 2021. The Two Month Notice was accepted into evidence and states that the tenants must move out by March 31, 2021, because the landlord or the landlord's spouse is moving into the subject rental property.

Both parties agree that the landlords attended at the subject rental property on January 27, 2021, for an inspection. Tenant T.D. testified that he verbally told the landlords on January 27, 2021, that he and tenant S.D. were moving out of the subject rental property on February 28, 2021 because they purchased their own property. The landlords testified that the tenants verbally informed them on January 27, 2021, that they might be moving out of the subject rental property on February 28, 2021 if the sale proceeds. The landlords testified that the tenants did not confirm with them in writing

that they were moving out before the effective date on the Two Month Notice. The landlords testified that a few days before the end of February 2021 they called the tenants who confirmed that they were moving out at the end of February 2021.

Tenant T.D. testified that when he handed the keys over to the landlords on February 28, 2021, the landlords were at the property with a trailer ready to move in. The landlords testified that landlord K.W. and the landlords' son moved into the subject rental property on February 28, 2021.

Tenant T.D. testified that pursuant to the Two Month Notice, the landlords were supposed to provide one months' free rent to the tenants, which they did not. Tenant T.D. testified that he paid February 2021's rent in full and did not receive one months' free rent.

The landlords testified that the tenants did not provide written notice to end the tenancy prior to the effective date set out on the Two Month Notice, that being March 31, 2021, so they applied the free months' rent to March 2021.

Analysis

Section 43(1) of the *Act* states:

- 43** (1)A landlord may impose a rent increase only up to the amount
- (a)calculated in accordance with the regulations,
 - (b)ordered by the director on an application under subsection (3), or
 - (c)agreed to by the tenant in writing.

Section 43.1(2) of the *Act* states:

- (2)A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice
- (a)is received before September 30, 2021, as determined under subsection (1) of this section, and
 - (b)has an effective date that is after March 30, 2020 and before January 1, 2022.

Section 43(5) of the *Act* states:

(5) 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.

Pursuant to section 43.1(2) of the *Act*, I find that the rent increase effective September 1, 2020 in the amount of \$39.00 is of no force or effect. I reject the landlords' argument that because the tenants didn't legally have to pay the rent increase and did so anyways, the landlords are permitted to retain the overpayment. Pursuant to section 43(5) of the *Act*, I award the tenants \$234.00 for overpayment of rent from September 2020 to February 2021.

Section 51 of the *Act* states:

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.

I find that section 51 clearly states that if the tenants received a notice to end tenancy under section 49 of the *Act*, then the tenants are entitled to receive the equivalent of one month's rent from the landlord. In this case, both parties agree that the landlords served the tenants with a notice to end tenancy under section 49 of the *Act*; therefore, the tenants are entitled to receive \$1,500.00 (one month's rent) from the landlords. I award the tenants \$1,500.00 pursuant to section 51(1) of the *Act*.

I note that the landlords cannot "apply" the one month's free rent required under section 51(1) of the *Act* to a month in which the landlords' resided at the subject rental property. Section 51 of the *Act* is intended to compensate the tenant for the landlords' end of the tenancy. Clearly the tenant does not derive any benefit from the landlord applying a free month's rent to a month in which the landlords themselves resided in the unit.

As the tenants were successful in this application for dispute resolution, I find that the tenants are entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Improper rent increase	\$234.00
One months' rent	\$1,500.00
Filing Fee	\$100.00
TOTAL	\$1,834.00

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: January 31, 2022

Residential Tenancy Branch