Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, MNDCT, FFT**

Introduction

This hearing dealt with a tenant's application for:

- recovery of unlawful rent increases;
- compensation payable where a landlord does not use the rental unit for the purpose stated on a Two Month Notice to End tenancy for Landlord's Use of Property ("2 Month Notice"); and,
- compensation for other damages or loss under the Act, regulations or tenancy agreement.

The tenants appeared at the hearing; however, there was no appearance on part of the landlord. Since the landlord did not appear, I explored service upon the landlord.

The tenants testified that they sent their proceeding package and evidence to the landlord via registered mail within three days of receiving the proceeding package, as required. The tenants provided a registered mail receipt dated July 29, 2021 as proof of service. A search of the tracking number showed the landlord did not pick up the registered mail and it returned as being unclaimed.

As to the address the tenants used to send the registered mail, the tenants submitted that the landlord failed to provide a service address on the tenancy agreement and on the Notices of Rent Increase served to them. However, the landlord had printed his service address on the Two Month Notice to End Tenancy for Landlord's Use of Property that he had served upon them, although the landlord had attempted to obscure his service address by blacking it out. The tenants had provided a copy of their tenancy agreement and Notices of Rent Increase which corroborate the tenant's testimony that the landlord left the landlord's service address blank in the spaces provided. The tenants also provided a copy of the 2 Month Notice which shows the landlord's service

address and being blacked out. The tenants testified that they were able to read the landlord's service address despite the landlord's attempts to black it out by holding it up to the light. Then the tenants went to that address and saw the landlord's truck parked in the driveway of that address.

Section 89(1) of the Act provides for the ways to serve an Application for Dispute Resolution pertaining to a monetary claim. Registered mail is a permissible method of service, as set out in section 89(1)(c) of the Act which I have reproduced below:

> c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

It appears to me the landlord was attempting to avoid providing the tenants with his service address which violates the requirements of section 13 of the Act; however, in preparing the 2 Month Notice his service address was printed. I accept the tenant's submissions that they were able to see the printed service address when they held the 2 Month notice up to the light and then the tenants went one step further to confirm the accuracy by driving by the address and seeing the landlord's truck parked in the driveway. Therefore, I find I am satisfied the tenants sent the registered mail to the landlord using his address of residence or address at which he carries on business as a landlord.

Although the landlord did not accept or pick up the registered mail that was sent to him at his service address, section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the person refuses to accept or pick up their mail so that they cannot avoid service. Therefore, I find the landlord deemed served five days after mailing, pursuant to section 90 of the Act, and I continued to hear this matter without the landlord present.

On another procedural note, the tenants stated that in all of the documents given to them by the landlord, the landlord identified himself using the name they used in preparing their Application for Dispute Resolution; however, during their tenancy they saw mail come to the rental unit addressed to the landlord using a different spelling of his last name. The tenants requested their Application for Dispute Resolution be amended to reflect an alternative the name the landlord may be using. I granted the amendment.

Finally, I note that this Application for Dispute Resolution was made on July 14, 2021, and I was presented unopposed evidence that the tenancy ended on July 15, 2019. As such, I find I am satisfied that the tenants made this Application for Dispute Resolution within the two year time limit for doing so.

Issue(s) to be Decided

1. Have the tenants established that the landlord collected unlawful rent increases from them and an entitlement to recovery of the unlawful rent increases paid?
2. Have the tenants established an entitlement to compensation payable because the landlord did not use the rental unit for the purpose stated on the 2 Month Notice served upon them?
3. Have the tenants established an entitlement to compensation from the landlord with respect to yard work performed at the residential property by the tenant?

Background and Evidence

The one year fixed term tenancy started on February 1, 2016 and continued on a month to month basis upon expiry of the fixed term. The tenants paid a security deposit of $450.00 and a pet damage deposit of $450.00. The tenancy agreement reflects that the monthly rent was set at $900.00 payable on the first day of every month.

On March 30, 2017, the landlord issued a Notice of Rent Increase to the tenants to increase the rent by $50.00, to $950.00 starting May 1, 2017. The tenants testified that the tenants sought to delay the increase until July 1, 2017, to allow three months of advance notice, to which the landlord agreed, and the tenants started paying $950.00 starting July 1, 2017.

On January 31, 2018, the landlord issued a Notice of Rent Increase to the tenants to increase the rent by another $50.00 to $1000.00 starting May 1, 2018. The tenants testified that they started paying $1000.00 starting May 1, 2018, until such time their tenancy ended.

On June 2, 2019, the tenants received a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") with a stated effective date of August 3, 2019. The reason for ending the tenancy, as stated on the 2 Month Notice was as follows:

Reason for this Two Month Notice to End Tenancy (check the box that applies)
☒ 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).

On June 23, 2019, the tenants gave the landlord at least 10 days of written notice that they would be ending the tenancy early, on July 15, 2019.

The tenants testified that they withheld rent for July 2019 and the landlord gave them compensation equivalent to one-half of a month's rent ($500.00) for bringing the tenancy to an end on July 15, 2019, as required under the Act. The tenants also acknowledged they received a refund of their deposits.

After their tenancy ended, in late July 2019, the tenants observed the landlord advertise the rental property for sale, online (Facebook Marketplace); however, the rental unit sat vacant until October 2019 when new tenants moved in.

By way of this Application for Dispute Resolution, the tenants seek the following:

1. Recovery of the rent increases they paid since the rent increases exceeded the annual allowable amounts and the tenants had not given written consent for rent increases in excess of the annual allowable amount. The tenants calculate the sum of unlawful rent increases is to be $1900.00 [($50.00 x 10 months) + ($100.00 x 12 months)].
2. Compensation payable in the amount equivalent to 12 times the monthly rent because the landlord did not use the rental unit for the purpose stated on the 2 Month Notice. The tenants calculate this to be $12000.00 [$1000.00 x 12 months].

In addition to the above, the tenants also seek compensation for the tenant performing yard work at the property during the tenancy. The tenant testified that the rental unit was one half of a duplex and the other side of the duplex was also tenanted. The tenants submitted that since this was a multiple unit property the landlord was responsible for performing the yard maintenance; however, he never did and the landlord expected the tenants to do it. The tenant in the adjacent rental unit at the property had been performing the yard work with an old push mower but the tenant took over the task after he borrowed a lawn tractor from his father-in-law. The tenant testified that he used the tractor to push snow off the driveway as well. The tenant stated he was motivated to just keep the peace with the landlord to avoid being evicted as the landlord would threaten to evict the tenants. The tenant estimated that he spent

54 hours performing yard maintenance duties and at an hourly rate of $11.25 that amounts to a claim of $607.50 for labour and approximately $500.00 for gas for the lawn tractor.

Evidence provided for this proceeding included a copy of the tenancy agreement; Notices of Rent Increase; the 2 Month Notice; the tenant's 10 day notice to end tenancy; images of the listing of the property for sale after the tenancy ended; images of the vehicles of the new tenants at the rental unit after their tenancy ended; and, the registered mail receipt and an image of the landlord's vehicle at the service address.

Analysis

Upon consideration of all of the unopposed evidence before me, I provide the following findings with respect to each of the tenants' claims against the landlord.

Unlawful rent increases

Rent payable by a tenant is set out in the tenancy agreement; however, rent may be increased by the landlord in accordance with Part 3 of the Act.

The tenants submit the landlord increased the rent by an unlawful amount, contrary to Part 3 of the Act.

Section 43(1), in Part 3 of the Act, provides for the amount of an allowable rent increase, as reproduced below:

> **Amount of rent increase**
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> **43** (1) A landlord may impose a rent increase only up to the amount
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> (a) calculated in accordance with the regulations,
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> (b) ordered by the director on an application under subsection (3), or
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> (c) agreed to by the tenant in writing.
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> (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
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> (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
>
> (4) [Repealed 2006-35-66.]

> (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.
>
> [My emphasis underlined]

In 2017, when the landlord issued a Notice of Rent Increase to the tenants, the annual allowable rent increase permitted under the regulations was 3.7%. Since the rent was set at $900.00 in 2016 when the tenancy started, the maximum annual allowable increase in 2017 would be $33.30 [$900.00 x 3.7%]. As such, I find that increasing the rent by $50.00 exceeded the maximum annual allowable amount. The tenants denied providing written consent to the landlord to increase the monthly rent by more than the annual allowable amount. Nor, did the landlord obtain the prior authorization of the Director for an additional rent increase. Accordingly, I find the increase of $50.00 that took effect on July 1, 2017, and paid by the tenants for the months of July 2017 through to April 2018, was non-compliant. Therefore, I find the rent increase was of no effect and the amount payable by the tenants remained at $900.00 per month. Pursuant to section 43(5) of the Act, the tenants are entitled to recovery of the non-compliant rent increase they paid, which is $500.00 for that period [$50.00/month x 10 months].

With respect to the second Notice of Rent Increase that was issued to the tenants by the landlord for an increase set to start May 1, 2018, the annual allowable rent increase permitted under the regulations was 4.0%. As such, the maximum amount the landlord was permitted to increase the rent was $36.00 [$900.00 x 4.0%]. By increasing the rent to $1000.00 per month, the increase was greater than 4.0%. The tenants denied providing written consent to the landlord to increase the monthly rent by more than the annual allowable amount. Nor, did the landlord obtain the prior authorization of the Director for an additional rent increase. Accordingly, I find the rent increase that took effect on May 1, 2018 was non-compliant and the monthly rent payable by the tenants remained at $900.00. Pursuant to section 43(5) of the Act, the tenants are entitled to recovery of the unlawful rent increase they paid, from May 2018 through to the end of their tenancy, which I calculate as $1350.00. [$100.00/month x 14 months for May 2018 through June 2019] less the overpaid refund the tenants received for July 2019 of $50.00 [50% of $900.00 = $450.00 and the tenants received a refund of $500.00].

Therefore, I find the tenant entitled to recover an unlawful rent increase of $1350.00 for the period of May 2018 through July 15, 2019.

Tenant's compensation payable under section 51(2) of the Act

Where a tenant receives a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") under section 49 of the Act, the tenant is entitled to compensation as provided under section 51 of the Act.

I have been provided unopposed evidence that the tenancy was ended by the landlord pursuant to a 2 Month Notice dated June 2, 2019, and the tenants brought the tenancy to an end early, as they are permitted to do, on July 15, 2019, with at least 10 days of written notice in accordance with section 50 of the Act. The tenants acknowledged that they withheld rent for July 2019 and were compensated by the landlord the equivalent of 50% of the rent for July 2019 which is in keeping with the compensation requirements of section 51(1) of the Act.

By way of this application, the tenants are seeking the additional compensation payable under section 51(2) of the Act.

Below, I have reproduced section 51(2) of the Act:

> (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
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> (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
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> (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Subsection (3) provides a mechanism to excuse the landlord from having to pay the compensation provided under section 51(2) due to "extenuating circumstances". Below, I have produced subsection (3):

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Act provides very specific and limited circumstances when a landlord may end a tenancy. The Act also provides very serious consequences where a landlord ends a tenancy by stating one reason on a 2 Month Notice and then not fulfilling the stated reason. The consequences include having to pay the tenant additional compensation. The requirement to pay the tenant additional compensation is intended to be a deterrent to ending a tenancy under false pretenses and in many cases, it provides an offset to the tenant often having to pay higher rent elsewhere. The spirit of the Act is to preserve existing tenancies except in limited and specific circumstances.

The tenants have put forth unopposed evidence that after their tenancy ended, the rental unit was listed for sale and remained vacant until new tenants moved into the rental unit in October 2019. As such, I find I am satisfied that the landlord or landlord's spouse or close family member did not occupy the rental unit for at least six months within a reasonable amount of time after the tenancy ended and the tenants are entitled to additional compensation payable under section 51(2).

I was not presented any evidence that would suggest an "extenuating circumstance" prevented the landlord from fulfilling the stated purpose on the 2 Month Notice and I do not excuse the landlord from paying the additional compensation.

In light of the above, I grant the tenant's request for compensation payable under section 51(2) of the Act. Having previously found the tenant's lawful rent remained at $900.00 per month and the tenants have been awarded recovery of the unlawful rent increases they paid; I calculate the award under section 51(2) to be $900.00/month x 12 months, or $10800.00

Compensation for yard maintenance

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation not otherwise provided elsewhere in the Act are provided in sections 7 and 67 of the Act. As provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether the tenants proved:

- the landlord violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the tenants;
- the tenants can prove the amount of or value of the damage or loss; and
- the tenants acted reasonably to minimize that damage or loss.

Residential Tenancy Policy Guideline 1 provides that a landlord is generally responsible for maintaining the yard where there are multiple units on a property, except for the areas that are for the exclusive use of a particular tenant or particular rental unit.

I heard unopposed evidence that the property included more than one rental unit and I did not hear evidence to suggest the units had areas of exclusive use. As such, I accept the tenant's unopposed position that the landlord should have been responsible for the yard work at the property.

Although I heard that the landlord did not or would not perform the yard work, the tenants did not provide evidence that they requested the landlord perform the yard work. Nor, did the tenants file an Application for Dispute Resolution to seek an order requiring the landlord to perform the yard work. Rather, it sounds to me that the tenants took it upon themselves to perform the work without any agreement that the landlord would compensate them for the work. In the circumstance before me, I find the tenants did not mitigate their losses, the fourth part of the criteria outlined above, and I decline their request for compensation for yard work.

Filing fee

Given the tenants' application had merit, I further award the tenants recovery of the $100.00 filing fee paid they for this application.

Monetary Order

In keeping with all of the above findings and awards, I provide the tenants a Monetary Order calculated as follows to serve and enforce upon the landlord:

Recovery of unlawful rent increases ($500.00 + $1350.00)	$ 1850.00
Compensation payable under section 51(2) of the Act	10800.00
Filing fee	100.00
Monetary Order	$12750.00

Conclusion

The tenants are provided a Monetary Order in the sum of $12750.00 to serve and enforce upon the landlord.

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 09, 2022

Residential Tenancy Branch