



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67;
- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:20 P.M. to enable the respondent landlord (the landlord) to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. Tenant TT (the tenant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was assisted by advocate MS. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, his advocate and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant affirmed the landlord purchased the rental unit in 2019 and served a two month notice to end tenancy (the Notice) in June 2020. The landlord's address is recorded on the Notice, which was submitted into evidence.

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on September 11, 2021, in accordance with section 89(1)(c) of the Act. The tracking number and the landlord's address are recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on September 16, 2021, in accordance with section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order for loss?
2. a monetary order for compensation under section 51(2) of the Act?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started in 2017 and ended on September 01, 2020. Monthly rent was \$2,400.00, due on the first day of the month.

The tenant submitted into evidence the tenancy agreement signed with the prior landlord. The tenancy agreement indicates monthly rent is \$2,200.00.

The tenant is claiming monetary compensation in the amount of \$2,200.00 because of an illegal rent increase.

The tenant stated the landlord called her on June 24, 2019 and increased rent to \$2,400.00 per month, effective on August 01, 2019. The tenant paid monthly rent in the amount of \$2,400.00 from August 01, 2019 to July 01, 2020. The tenant testified she did not receive a notice of rent increase and that she was not aware at the time that the landlord could not increase rent without serving a notice of rent increase.

The tenant submitted into evidence a deposit receipt indicating she deposited \$2,200.00 in the landlord's bank account on July 02, 2019 and \$2,400.00 on August 08, 2019.

The tenant is claiming monetary compensation in the amount of \$26,400.00 because the landlord did not occupy the rental unit. The tenants considered the monthly rent of \$2,200.00 to calculate the amount claimed.

The June 28, 2020 Notice indicates the rental unit will be occupied by the landlord, the landlord's spouse or the landlord's child. The landlord named on the Notice is the respondent landlord. The Notice's effective date is September 01, 2020.

The tenant said he met the landlord and his wife in person twice and the landlord told the tenant that his children are attending university.

The tenant and advocate MS affirmed that between June and September 2020 a group of farmers hired by the landlord constantly entered the rental unit's backyard to access a farm located behind the rental unit. The farmers seemed to be 40-50 years old.

The tenant moved to a property in the same neighbourhood and has often been driving by the rental unit between 9:00 A.M. and 7:00 P.M. since September 2020. The tenant and advocate MS stated they observed the farmers have been occupying the rental unit since September 2020. The tenant and advocate MS also observed that the car used by the farmers when they visited the rental unit between June and September 2020 has been parked on the rental unit's driveway.

The tenant is claiming compensation in the total amount of \$28,600.00.

Analysis

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 the case is on the person making the claim.

Rent Increase

Sections 41, 42 and 43 of the Act state:

41 A landlord must not increase rent except in accordance with this Part.

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(1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

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- (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.**

- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(emphasis added)

Based on the convincing testimony offered by the tenant, the tenancy agreement and the deposit receipts, I find the landlord was subject to section 43(1) of the Act and the landlord did not comply with section 43 by establishing a rent in the amount of \$2,400.00.

Section 43(5) of the Act states: "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."

Based on the tenant's undisputed convincing testimony and the deposit receipts, I find the tenant overpaid rent in the amount of \$200.00 per month from August 01, 2019 to July 01, 2020.

Thus, in accordance with section 43(5) of the Act, I find the tenant is entitled to compensation in the amount of \$2,200.00 (\$200.00 x 11 months).

12 month compensation

Section 49(3) of the Act states: "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if:

(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

(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.

I accept the tenant's undisputed testimony that the Notice was served with the intent of the landlord, the landlord's spouse or the landlord's child occupying the rental unit. Per section 51(2) of the Act, as the Notice's effective date was September 01, 2020, the landlord, the landlord's spouse or the landlord's child must have occupied the rental unit from September 02, 2020 to March 02, 2021.

Residential Tenancy Branch Policy Guideline 2A states:

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

[...]

E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA 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

the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

Based on the coherent, detailed and undisputed testimony offered by the tenant and advocate MS, I find, on a balance of probabilities, that the landlord, the landlord's spouse or the landlord's child did not occupy the rental unit from September 02, 2020 to March 02, 2021.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of \$26,400.00 (\$2,200.00 x 12).

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee.

In summary:

Item	Amount \$
Rent increase	2,200.00
12 month compensation	26,400.00
Filing fee	100.00
Total monetary award	28,700.00

Conclusion

Pursuant to sections 43(5), 51(2), 67 and 72 of the Act, I grant the tenant a monetary award in the amount of \$28,700.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order in accordance with the Act. 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: March 10, 2022

Residential Tenancy Branch