



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, DRI

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 07, 2021. The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 03, 2021 (the “Notice”)
- For compensation for monetary loss or other money owed
- To dispute a rent increase that is above the amount allowed by law

This matter came before me March 24, 2022, and an Interim Decision was issued the same date. This decision should be read with the Interim Decision.

The Tenant and Advocate appeared at the hearing. The Landlord did not appear at the hearing. I explained the hearing process to the Tenant and Advocate. I told the Tenant and Advocate they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant and Advocate provided affirmed testimony.

I addressed service of the hearing package and Tenant’s evidence on the Landlord in the Interim Decision. I note that the new Notice of Hearing for the reconvened hearing on April 07, 2022, was sent to the Landlord by the RTB on March 24, 2022. I was satisfied of service of the Landlord as found in the Interim Decision and was satisfied the RTB made the Landlord aware of the reconvened hearing. In the circumstances, I continued with the hearing in the absence of the Landlord.

The Tenant and Advocate were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the Tenant and Advocate. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?
3. Has there been a rent increase that is above the amount allowed by law?

Background and Evidence

The Tenant and Advocate provided the following testimony and submissions.

There was likely a written tenancy agreement between the parties at the start of the tenancy; however, the Tenant does not have a copy of it. The Tenant moved into the rental unit 17 years ago. The tenancy is a month-to-month tenancy. Rent should be \$1,055.00 per month due on the first day of each month. The Tenant paid a \$400.00 security deposit.

In relation to the request for compensation, the Tenant overpaid rent by \$900.00. At page seven of the materials, the Repayment Plan shows two handwritten notations of \$450.00 paid in November and December; however, the total amount owing was not recalculated and the Tenant ended up paying \$900.00 more than was owing.

In relation to the illegal rent increase, the Notices of Rent Increase are at pages three to six of the materials. The first Notice of Rent Increase shows rent went from \$1,030.00 to \$1,055.00 in 2019. The second Notice of Rent Increase shows that the Landlord thought the current rent was \$1,080.00 not \$1,055.00 as it was supposed to be. Further, the increase was not permitted because it was for December of 2020 when rent increases were suspended due to the pandemic. The Tenant is seeking \$25.00 per month back from January 01, 2020, to present because the Tenant has been paying \$1,080.00. The Tenant is also seeking an order that rent is \$1,055.00.

Analysis

1. *Should the Notice be cancelled?*

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The Landlord did not appear at the hearing or provide evidence for the hearing and therefore the Landlord has failed to prove the grounds for the Notice and the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

2. *Is the Tenant entitled to compensation for monetary loss or other money owed?*

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 67 of the *Act* states:

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the undisputed testimony and submissions of the Tenant and Advocate, as well as the Repayment Plan, I accept that the Tenant overpaid rent by \$900.00 and therefore is entitled to recover this overpayment from the Landlord.

3. *Has there been a rent increase that is above the amount allowed by law?*

Part 3 of the *Act* governs rent increases and states in part:

Rent increases

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

Timing and notice of rent increases

42 (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.

Amount of rent increase

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.

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

(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...

(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.

Notice of rent increase has no effect

43.1 (1) For the purposes of this section, a date that applies under section 90 (a), (b), (c) or (d), or that is prescribed under section 97 (2) (p), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.

(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.

Based on the undisputed testimony and submissions of the Tenant and Advocate, as well as the Notices of Rent Increase, I accept that the Landlord increased rent unlawfully from \$1,055.00 to \$1,108.00 effective December 01, 2020. Based on the Notice of Rent Increase, I find it was issued August 30, 2020. I accept that the rent increase was unlawful for two reasons. First, the "current rent" noted on the Notice of Rent Increase is wrong. Second, the rent increase was to occur while annual rent increases were restricted due to the pandemic. In the circumstances, I find the rent increase issued August 30, 2020, invalid and therefore **rent remains at \$1,055.00** until such time as the Landlord increases rent in accordance with the *Act*. Further, I accept the undisputed testimony and submissions of the Tenant and Advocate that the Tenant has been paying \$25.00 more per month in rent than they

are required to. I calculate \$25.00 per month from January 01, 2020, to present to be **\$700.00 and award the Tenant this amount.**

In total, the Tenant is awarded \$1,600.00 pursuant to section 67 of the *Act* and is issued a Monetary Order in this amount. The Tenant can also choose to not enforce the Monetary Order and instead deduct \$1,600.00 from their next two rent payments pursuant to section 72(2) of the *Act*.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Rent remains at \$1,055.00 per month until such time as the Landlord increases rent in accordance with the *Act*.

The Tenant is awarded \$1,600.00 and is issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court. The Tenant can also choose to not enforce the Monetary Order and instead deduct \$1,600.00 from their next two rent payments.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 21, 2022

Residential Tenancy Branch