



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC MNDC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on May 19, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- I want compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the Act
- I want compensation for my monetary loss or other money owed

The Landlord was present at the hearing with his legal counsel, and a witness (collectively referred to as the Landlord). One of the Tenants attended the hearing. Both parties provided affirmed testimony.

### Service

The Tenant stated that he was unable to serve the Landlord with his Notice of Dispute Resolution Proceeding and evidence package because he did not have the Landlord's mailing address. The Landlord confirmed that he was unaware of this proceeding until the RTB sent a reminder email, about the upcoming hearing. The Landlord received this email 2 weeks before the hearing, and immediately called the RTB to find out what was going on. The Landlord confirmed he was given a copy of the Notice of Dispute Resolution Proceeding and a list of the Tenants' evidence (just a list of the document names, not the actual documents). The Landlord subsequently put together his own set of evidence and personally served the Tenant with these documents 7 days before the hearing. The Tenant acknowledged getting the Landlord's evidence and did not take issue with service. I find the Landlord sufficiently served his evidence.

With respect to the Tenant's Notice of Dispute Resolution Proceeding and evidence package. I note the Tenant did not serve the Landlord. Despite this, the Landlord confirmed he was wished to proceed with the hearing, rather than adjourn the matter so that the Tenant could serve his evidence to the Landlord. The Landlord reiterated that he wanted to get the hearing over with, and did not want to delay things further, so he asked to proceed without having had a chance to view the Tenant's evidence. The Landlord agreed that the Tenant's evidence could be viewed and considered by myself. By mutual consent, I find the Tenant's evidence is admissible, and I find the Landlord was sufficiently served with the Notice of Dispute Resolution Proceeding for the purposes of this proceeding, as he had 2 weeks to read and understand the contents of that package that the RTB provided to him.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under section 51 of the Act?
- Are the Tenants entitled to compensation for other money owed?

#### Background and Evidence

The tenancy started around June 1, 2016, and ended on October 7, 2019. The Tenants paid a monthly rent in the amount of \$1,500.00 per month from June 1, 2016, until February 2019, at which point, rent went up to \$1,750.00 per month.

A copy of the initial tenancy agreement was provided into evidence. This agreement was between the Tenants, and the previous owner. Landlord stated that he purchased the property from the previous owner, and the sale completed on November 1, 2018.

On October 31, 2018, the Tenant acknowledges receiving the 2 Month Notice to End Tenancy for Landlord's Use (the Notice), and it was delivered by the Landlord, but signed by the seller. The Landlord stated that he asked for this Notice to be issued by the seller because he and his girlfriend wanted to move into the rental unit by January 1, 2019.

The Tenant stated that the Landlord continued to check in, after the Notice was issued, and each time, after the Tenants stated they had not yet found a place to move to, the Landlord offered the option to continue the tenancy, but at an increased rent amount of \$2,000.00. The Tenant stated that in early December 2018, the Landlord sent them a new offer, that either they leave by the end of December, in accordance with the Notice, or they stay and pay an increased rent amount of \$1,700.00 for 6 months (January to June 2019), \$1,800.00 per month for July – September 2019, \$1,900.00 for October – December 2019, and \$2,000.00 starting January 2020. The Tenant stated that they refused the offer, and they continued to search for a new place to live.

The Tenant stated that the Landlord continued to check in, as they were having challenges finding a place to move to. The Tenant stated that on February 25, 2019, he and the Landlord came to a verbal agreement to continue the tenancy for at least another 6 months. The Tenant stated that he agreed to pay \$1,750.00 per month, for a 6-month fixed term from March 1, 2019, until August 31, 2019. The Tenant stated that they were still casually looking for another place to move to, but they were unable to find anything to rent by the end of the 6 months, so they stayed in the rental unit for September 2019 as well, for \$1,750.00.

The Tenant provided into evidence a copy of the email sent by the Landlord, on February 25, 2019, confirming that the parties agreed that the Tenants would rent the unit for \$1,750.00 per month, starting on March 1, 2019, and ending on August 31, 2019.

The Tenant stated that towards the end of September 2019, the Landlord again reached out to them and stated that he wished to move into the apartment, but if the Tenants were willing to sign a lease for \$2,200.00, a one-year lease could be signed. The Tenant stated that he informed the Landlord at this time that he would like to move out, and was planning on doing so in early October 2019. The Tenant moved out on October 7, 2019. The Tenant stated that when he went back to the rental unit in December of 2019, the lady who answered the door stated she was the new renter and was paying \$1,925.00 per month.

The Tenants are seeking 12 months compensation pursuant to section 51(2) of the Act related to the Notice because the Landlord never moved in. The Tenants are also seeking \$12,000.00 because they had to incur an increase of \$1,000.00 per month over the following year to pay for a suitable alternative rental unit. The Tenants asserted they were forced to move because the Landlord kept asking for more rent. The Tenants are

also seeking \$1,750.00 (7 months x \$250.00) because they feel their rent was unlawfully increased from \$1,500.00 to \$1,750.00 for the last 7 months of the tenancy (from March to September 2019).

The Landlord acknowledged the Notice was initially issued because he and his girlfriend at the time wanted to move in. The Landlord confirmed he purchased the unit from the seller on or around November 1, 2018 (completion date), which was a day after the Notice was issued. The Landlord stated that the plan was to move in by January 1, 2019, but the Tenants did not move out, as they could not find a suitable place to move to. The Landlord stated that he remained in constant contact with the Tenant because he wanted to know if and when the Tenants were moving out. The Landlord stated that the Tenants' potential move out date always seemed to be delayed.

The Landlord stated that on or around February 24, 2019, he and the Tenant came to a verbal agreement whereby the Tenants would not have to move out in accordance with the initial 2 Month Notice. The Landlord explained that he and the Tenants agreed, verbally, for a 6 month fixed-term tenancy agreement, starting March 1, 2019, ending August 31, 2019, for \$1,750.00 per month.

The Landlord stated that by the time the Tenants actually moved out, he and his girlfriend were having relationship issues, and the plan had changed, which is why he ended up re-renting it to someone else after this tenancy ended. The Landlord stated that when the Notice was issued, he had a good faith intention to move into the rental unit with his girlfriend. However, given the amount of time that had lapsed between when the Notice was issued, and when the Tenants actually vacated, his plans changed. The Landlord argued that since he and the Tenants agreed to a 6-month fixed term tenancy agreement, as of March 1, 2019, that the tenancy was re-instated, and the Notice was revoked at that time. The Landlord argued that the Tenants left voluntarily one month after the end of the 6-month fixed term tenancy agreement, which was their choice.

## Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

***ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS***

*A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:*

- accomplished 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 (except for demolition).*

*A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:*

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.*

*Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance.

I turn to the following portion of the Act:

***Tenant's compensation: section 49 notice***

**51** (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*

*(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.*

(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.*

As noted above, and generally speaking, when a tenancy ends by way of a Notice under section 49 of the Act, the onus is on the Landlord to prove that they accomplished the stated purpose on the Notice, otherwise the Landlord may be required to pay compensation pursuant to section 51(2) of the Act, if not excused under section 51(3). However, in this case, I first turn to the issues surrounding how the tenancy ended, the timing of the Notice, and the subsequent verbal fixed term tenancy agreement that the parties entered into as of March 2019.

I note the Tenants and the Landlord had numerous conversations, following the issuance of the Notice, about when and if the Landlord would move into the unit, and when the Tenants would be able to move out. It appears the Tenants initially intended on moving out, but were having challenges finding a suitable place to move to. Alongside this, the Landlord was also discussing the potential for the Tenants to pay more rent.

I note the parties do not dispute that they both verbally agreed to enter into a 6-month fixed-term tenancy agreement, starting March 1, 2019, ending on August 31, 2019. As part of this verbal fixed term agreement, both parties agreed to an increased rent amount of \$1,750.00 per month over the previous rent amount of \$1,500.00. Having considered the totality of the evidence and testimony on this matter, I find the Notice issued on October 31, 2018, was cancelled and of no force or effect, once the parties agreed to enter into a new verbal fixed term tenancy agreement, effective March 1, 2019, as the parties chose to continue the tenancy. I find the parties chose to re-instate the tenancy, by way of the verbal fixed term tenancy agreement with modified term, and when the tenancy ended in October 2019, one year after the Notice was issued, it did not end pursuant to the Notice. I find section 51(2) does not apply, given the tenancy did not end by way of the Notice.

I note that, not only did the Tenants stayed in the rental unit for the entire 6-month term following the issuance of the Notice, they even extended the tenancy for approximately one additional month, at which point they decided to move out. Although there may have been growing frustration from the Tenants about having to keep talking to the Landlord about rent increases, I do not find they were under any requirement, pursuant to the Notice issued the previous year, to move out. I dismiss the Tenants' application for 12 months rent as compensation, pursuant to section 51(2) of the Act, for the above noted reasons.

With respect to the Tenants' request for compensation for \$12,000.00, I note the Tenants stated on their application that they are seeking this amount largely because the Landlord kept trying to increase monthly rent. The Tenants felt they were forced to leave. However, I am not satisfied the Tenants were forced to leave. As previously noted, I do not find the Tenants were required to move out due to the Notice. Further, I note the Tenants did not file an application for dispute resolution to dispute any alleged illegal rent increases at the time they were happening. Should they have done this, the Tenants could have addressed the rent increase issues at the time they were happening which may have helped mitigate further potential monetary damages relating to moving, and any subsequent increased cost of living, following the move. There is a lack of mitigation in this regard. If the Tenants felt the rent increases were unacceptable, and forced them out, then they should have filed for dispute resolution to gain clarity on the rent increase issues, prior to deciding to move out. I dismiss the Tenants' application for this item, in full, without leave.

Next, I turn to the last item on the Tenant's application, for \$1,750.00. I note the Tenants are seeking this amount because they were given an illegal rent increase for the last 7 months of their tenancy, from March 1, 2019, until October 2019.

I note the following portion of *Policy Guideline #37 – Rent Increases*

**A. LEGISLATIVE FRAMEWORK**

***Permitted Rent Increases***

*Under section 36 of the Manufactured Home Park Tenancy Act (MHPTA) and section 43 of the Residential Tenancy Act (RTA), a landlord may impose a rent increase only up to the amount:*

- *calculated in accordance with the regulations ("annual rent increase")*
- *agreed to by the tenant in writing ("agreed rent increase")*
- *ordered by the director on an application in the circumstances prescribed in the regulations ("additional rent increase")*

[...]

**C. AGREED RENT INCREASE**

*A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must be in writing, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.*

In this case, I note the parties came to a verbal agreement, on or around February 24 or 25, 2019, effective March 1, 2019, that the Tenants would continue living in the rental unit until at least August 31, 2019. This verbal agreement is summarized in the Landlord's subsequent email, which was provided into evidence. The Tenants were paying monthly rent in the amount of \$1,500.00 and had been paying this amount for several years. I find the agreement reached on or around February 25, 2019, was a new tenancy agreement formed between the parties for a 6-month term, until at least August 31, 2019. Despite the fact that the parties agreed to the above noted rent increase of \$250.00 per month, effective March 1, 2019, I note this agreement was not in writing



(despite the fact it was summarized by the Landlord in writing), which is a violation of the Act and the Policy Guidelines. Further, even if the agreement was properly in writing, and signed by the parties, the Landlord would still be required to issue a formal Notice of Rent Increase, at least 3 months before the rent was increased. I find the Landlord breach the Act, the guidelines, and the regulations in this regard. I find that when the rent increased from \$1,500.00 to \$1,750.00 for the last 7 months of the tenancy, that this was an illegal rent increase, and I find the Tenants are entitled to receive the entire amount of the rent increase back, as it was not lawfully done. I award the Tenants the full amount for this item,  $7 \times \$250.00 = \$1,750.00$ .

As the Tenants were partly successful with their application, I grant them the recovery of the filing fee against the Landlord.

In summary, I award \$1,850.00 for the unlawful rent increase, and the filing fee.

### Conclusion

I grant the Tenants a monetary order in the amount of \$1,850.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: May 24, 2022

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Residential Tenancy Branch