



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") made on June 20, 2022. The Tenant applied for a monetary order for compensation under the Act, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Tenant and a support person (the "Tenant") as well as the Landlord and a support person (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

Preliminary Matter – Email Service

During these proceedings, both the Landlord and the Tenant confirmed that they had used email for the service of legal documents to each other during this tenancy. The Landlord confirmed that they had served two rent increase notices to the Tenant by email and that the Tenant confirmed that they had served a 10-day notice to end the tenancy by email.

Both parties indicated that there was no written agreement between them for the service of legal documents by email; however, they both confirmed that they serve and received

legal documents through the email service and they both acted based on the receipt of those documents through emails.

I find that even though there is no signed agreement between these parties for the service of legal documents through email, I find that the actions of both these parties to send documents by email, to acknowledge these documents by email, and act accordingly in relation to those documents, had created an agreement between them to accept service of legal documents by email.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or loss under the *Act*?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on August 1, 2012, and that rent for this tenancy started at \$1,500.00 per month. The parties agreed that the Tenant paid the Landlord a \$750.00 security deposit at the beginning of the tenancy. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Landlord and Tenant agreed that the rent was increased twice during this tenancy, the first rent increase was issued on August 8, 2018, by email to the Tenant from the Landlord, which increased the monthly rent from \$1,500.00 to \$1,600.00, effective October 1, 2018. The parties agreed that the Tenant started paying the first rent increase as of October 1, 2018.

The Tenant testified that the email notice of rent increase provided to them from the Landlord increased the rent by \$100.00 and that this was in excess of the allowable amount set by the *Act*. Additionally, the Tenant testified that the Landlord had not issued the notice on the required form for the rent increase.

The Landlord agreed that they had collected the increased rent amount of \$1,600.00 between October 2018 through December 2019 and that they had not issued the Notice of rent increase form.

The Landlord and Tenant also agreed that a second rent increase notice was issued on August 23, 2019, by email to the Tenant, which increased the monthly rent from \$1,600.00 to \$1,700.00. The parties agreed that the Tenant pushed back on this increase, emailing the Landlord, to advise them that the rent increase was above the allowable amount.

The Landlord agreed that they contact the Residential Tenancy Branch regarding the second rent increase and amended their Notice, reducing the rent increase to \$41.60 and issuing the correct rent increase form as required under the *Act*.

The Tenant confirmed that they received the correct form for the second notice to increase, in September 2019, and that they started paying the new rent amount of \$1,641.60 as of January 1, 2020.

The Landlord agreed that they collected the increased rent amount of \$1,641.60 between January 2020 to May 2022.

Both the Landlord and Tenant agreed that the Landlord issued a Two-Month Notice to end tenancy, and that the Tenant moved out of the rental unit in accordance with that Notice on May 20, 2022. The parties also agreed that the move-out inspection was conducted in accordance with the *Act* at the end of this tenancy and that the Landlord had returned the security deposit to the Tenant and paid the one-month rent compensation due to the Tenant, under the Two-Month Notice. The Tenant submitted a copy of the Two-Month Notice into documentary evidence.

The Tenant submitted that they had provided written notice to the Landlord to end their tenancy earlier than the effective date of the Two-Month Notice and that the Landlord had refused to return their rent pay for the last 10 days in May 2022 for this tenancy, the period when they had not occupied the rental unit. The Tenant testified that they issued a written 10-day Notice to the Landlord on May 10, 2022, by email, advising the Landlord that they would be moving out as of May 20, 2022. The Tenant testified that they heard back from the Landlord several days later, confirming that the Landlord had received their 10-day Notice. The Tenant submitted a copy of the 10-day Notice email into documentary evidence.

Both parties agreed that the Tenant moved out of the rental unit in accordance with the 10-day notice, that the rent for May 2022 had been paid in full by the Tenant, and that

no rent had been returned to the Tenant for the period between May 21 to May 31, 2022, for this tenancy.

The Tenant submitted that both the rent increase issued by the Landlord for this tenancy were above the allowable amount and should be returned to the Tenant. The Tenant also submitted that they are due the recovery of their rent between May 21, 2022, to May 31, 2022. As they had issued a 10-day notice in accordance with the Act after receiving a Two-month notice to end the tenancy for the Landlord.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

In this case, the Tenant is claiming for the return of their payments of two rent increases and the recovery of their rent for a period that they did not reside in the rental unit. I will address the claim for the return of rent for rent increases first. Section 43 of the Act states the following regarding rent increases:

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.*
- (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.*

Section 6 of the *Residential Tenancy Regulations* (the “Regulations”) provides further guidance on rent increases, stating the following:

Rent increase

6 (1) *Once a year, except during the period that starts on March 30, 2020 and ends on December 31, 2021, the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.*

(2) *A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.*

[For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]

(3) *The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.*

(4) *Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.*

Pursuant to section 6(3) of the *Regulation*, a Landlord may only increase the rent by the amount set out by the *Regulation*. The historical data on the Residential Tenancy Branches website records the maximum allowable rent increase for 2018 was set at 4%. Therefore, for this tenancy the maximum allowable rent increase for 2018, based on a monthly rent of \$1,500.00, was \$60 per month.

I accept the agreed-upon testimony of these parties that the Landlord issued an emailed letter to increase the rent by \$100.00, from \$1,500.00 to \$1,600.00, effective October 1, 2018. Therefore, I find that the rent increase issued by this Landlord of \$100.00, which took effect on October 1, 2018, to have been an illegal rent increase that was in excess of the maximum amount allowed under the *Act*. As this rent increase has been determined to be in excess of the allowable amount, I order that the rent increase is cancelled and the rent for this tenancy is retroactively reduced to the original rent amount under the tenancy agreement of \$1,500.00 as of October 2018.

I accept the testimony of these parties that the Tenant did pay \$1,600.00 per month in rent between, October 2018 to December 2019, which is an overpayment of \$100.00

per month. Pursuant to section 43(5) of the *Act*, I order the Landlord to return this overpayment in rent to the Tenant in the amount of \$1,500.00; consisting of the overpayment of \$100.00 for 15 months between October 2018 to December 2019.

Monthly rent collected between Oct 2018 - Dec 2019	\$1,600.00
Allowable monthly rent between Oct 2018 - Dec 2019	\$1,500.00
Illegal rent increased amount per month	\$100.00
Number of months between Oct 2018 -Dec 2019	15
Overpayment of rent refunded for Oct 2018 -Dec 2019	\$1,500.00

As for the second rent increase issued by the Landlord in September 2019, I accept the agreed-upon testimony of these parties that the Landlord had issued an emailed notice to the Tenant to increase the rent by \$41.60, from \$1,600.00 to \$1,641.60, effective January 1, 2020.

The historical data on the Residential Tenancy Branches website recorded that the maximum allowable rent increase for 2020 was set at 2.6%. As it has already been determined above that the monthly rent for this tenancy was \$1,500.00 per month as of September 2019, the date when the Landlord's second rent increase notice was issued, I find that the maximum allowable rent increase for 2020 would have been \$39.00 per month.

Therefore, I find that the rent increase issued by this Landlord of \$41.60, which took effect on January 1, 2020, to have been an illegal rent increase that was in excess of the maximum amount allowed under the *Act*. As this second rent increase has also been determined to be illegal, I order that the rent for this tenancy remained at the original rent amount under the tenancy agreement of \$1,500.00 per month as of January 2020.

I accept the testimony of these parties that the Tenant paid \$1,641.60 per month in rent between, January 2020, to May 2022, an overpayment of \$141.60 per month. Pursuant to section 43(5) I order the Landlord to return this overpayment in rent to the Tenant in the amount of **\$4,106.40**; consisting of the overpayment of \$141.60 per month for 29 months between January 2020 to May 2022.

Monthly rent collected between January 2020 - May 2022	\$1,641.60
Allowable monthly rent between January 2020 - May 2022	\$1,500.00
Illegal rent increased amount per month	\$141.60
Number of months between January 2020 - May 2022	29

Overpayment of rent refunded for January 2020 - May 2022	\$4,106.40
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The Tenant has also applied for the recovery of their rent between May 21, 2022, to May 31, 2022.

I accept the agreed-upon testimony of these parties, supported by the documentary evidence, that the Landlord served a Two-Month Notice to end tenancy to the Tenant on March 28, 2022, listing an effective end of tenancy date of May 31, 2022. Section 50 of the *Act* states that upon receipt of a Two-Month Notice to end a tenancy, a tenant who wishes to end their tenancy earlier than the effective date on the Notice may do so by issuing 10-days written notice to the Landlord.

Section 50 of the *Act* states the following:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [director's orders: renovations or repairs], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

I accept the testimony of the Tenant, supported by their documentary evidence, that they issued a 10-day written notice to the Landlord, by email sent on May 10, 2022, to end their tenancy earlier than the effective date of the Landlord's Two-Month Notice, on May 20, 2022.

Section 44 of the *Regulation* states following regarding email service:

When documents are considered to be received

44 A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.

Pursuant to section 44 of the *Regulation*, I find that the Landlord was deemed to have received the Tenant's 10-day notice to end their tenancy early on May 13, 2022, three days after it was emailed to the Landlord. Based on the date the Tenant's notice was deemed received by the Landlord, I find that this tenancy legally ended ten days later, on May 23, 2022.

Therefore, under section 50(2) of the *Act*, I find that the Tenant is entitled to the return of their rent between May 24, 2022, to May 31, 2022, and I award the Tenant \$387.10; consisting of eight days at the per demi rate of \$48.39.

Monthly rent	\$1,500.00
Per diem	\$48.39
Days refunded (May 24 - 31, 2022)	8
Rent Refund	\$387.10

I acknowledge the Tenant physically paid \$1,641.60 for the month of May 2022; however, the overpayment amount of \$141.60 for May 2022, has already been awarded above.

Additionally, I accept the agreed-upon testimony of these parties, the that the Landlord paid the Tenant the one-month compensation due to the Tenant pursuant to section 51 of the *Act* for the Landlord issuing a Two-Month Notice, in the amount of \$1,641.60. As the rent of this tenancy has been set at \$1,500.00 per month in this decision, I find that the Landlord overpaid the one-month compensation, in the amount of \$141.60. I order that \$141.60 is deducted from the amounts awarded to the Tenant in this decision in full recovery of this overpayment by the Landlord.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Overall, the Tenant is granted a monetary order in the amount of \$5,951.90; consisting of \$1,500.00 in the overpayment of rent between October 2018 to December 2019,

\$4,106.40 in the overpayment of rent between January 2020 to May 2022, \$387.10 in the per diem recovery of their rent between May 24 to May 31, 2022, \$100.00 in the recovery of their filing fee for these proceedings, and less \$141.60 in the Landlord's overpayment of the one-month compensation under section 51 of the *Act*.

Rent refund for the period between October 2018 - December 2019	\$1,500.00
Rent refund for the period between January 2020 - May 2022	\$4,106.40
Per diem refund for the period between May 24 - May 31, 2022	\$387.10
Recovery of the filing fee	\$100.00
Less the overpaid one-month compensation amount	-\$141.60
Total awarded to the Tenant	\$5,951.90

Conclusion

I find that the Landlord breached section 43 of the *Act* when they issued two rent increases for this tenancy in excess of regulated amount.

I find that the Landlord breached section 50(2) of the *Act* when they failed to refund the Tenants Per Diem rent after the Tenant issued notice to end their tenancy earlier under the Landlord's Two-Month Notice.

I grant the Tenant a **Monetary Order** in the amount of **\$5,951.90**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. 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 14, 2023

Residential Tenancy Branch