



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDCT, MNETC, FFT

### **Introduction**

This hearing commenced on December 15, 2022, and was adjourned to May 8, 2023 to allow the landlord's wife PM to review the hearing materials and attend the hearing.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for money owed or compensation pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties confirmed that they understood.

Both landlords confirmed receipt of the tenant's application and evidentiary materials, and that they were prepared to proceed with the scheduled hearing. The landlords did not submit any written evidence for this hearing.

### **Issues**

Is the tenant entitled to the monetary orders applied for?

Is the tenant entitled to recover the cost of the filing fee from the landlords for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on September 1, 2015, and ended on March 31, 2022 after the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use on February 26, 2022.

Both parties confirmed that the monthly rent was originally set at \$2,000.00 per month at the beginning of the tenancy, and that from September 2018 to February 2022, the tenant was paying \$2,100.00 in monthly rent.

The tenant filed this application as they feel that the landlords had increased the rent in a manner that does not comply with the *Act*. The tenant testified that in August 2018 they requested that the landlords repair the washing machine. The tenant testified that that the landlords then requested an additional \$100.00 per month. The tenant testified that no Notices of Rent Increase were issued, and that they paid the rent increase until the end of the tenancy under duress. The tenant felt that if they did not pay the additional \$100.00 then the landlords would not repair the washing machine. The tenant is requesting reimbursement of the \$100.00 paid for the period of September 2018 to February 2022. The tenant testified that they had withheld \$2,100.00 in rent for this tenancy, and want the remaining \$2,100.00 in overpayment of rent. The tenant is also requesting the equivalent of one month's compensation for the 2 Month Notice that was served on them.

The landlords do not dispute that the tenant is entitled to one month's compensation for the 2 Month Notice, but dispute the tenant's claim for the rent increase. The landlords testified that they did discuss the rent increase with the tenant, and that the conversation took place the first week of April 2018. The landlords testified that they requested the additional rent due to increased expenses, and asked that the tenant think about it. The landlords informed the tenant that if they agreed to the requested \$100.00, they would not increase the rent for the rest of the tenancy.

The landlords testified that in September 2018 the tenant paid their rent in cash, and inside the envelope was the additional \$100.00. The landlords testified that the tenant paid the \$100.00 voluntarily for the rest of the tenancy, and did not hear about the increase being an issue until after the tenant was served with the 2 Month Notice. The landlords testified that they never threatened the tenant, nor did they force the tenant to pay the additional rent.

### **Analysis**

Sections 42 and 43 of the Act address the timing, notice and amount of rent increases permitted by legislation.

#### **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.

(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.

Although it is undisputed that the tenant was never served with a notice of rent increase in the approved form, I find that the tenant had paid the additional \$100.00 for many years, and continued to do so until after they were served with the 2 Month Notice. For 42 months, the tenant paid an additional \$100.00 every month. Despite the tenant's claim that the rent increase was invalid, and imposed without their consent, the tenant did not file any applications during this tenancy disputing the rent increase, nor did they

ask for a refund of the amounts paid until after they were served with the 2 Month Notice.

Although the tenant claims that they were forced to pay the additional \$100.00, and that this decision was made under duress, I do not find this assertion to be supported in evidence. Although the tenant claims that they were concerned about the landlords' refusal to repair the washing machine, the tenant did not submit sufficient evidence to support any refusal on part of the landlords, nor did the tenant ever file any applications for dispute resolution requesting that the landlords comply with the *Act* or perform repairs.

Even though the tenant had never confirmed in writing that they were accepting the proposed rent increase, by paying the increased rent for over 3.5 years, without filing any applications disputing the increase throughout the tenancy, I find that the tenant had clearly implied their acceptance of the rent increase. I am not satisfied that the rent increase was accepted under duress or coercion. I find that the tenant had accepted and consented to the rent increase, and I dismiss the tenant's application for a refund of the additional rent without leave to reapply.

Section 51 of the *Act* reads in part as follows:

**51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

As the tenant was served with a 2 Month Notice pursuant to section 49 of the *Act*, the tenant is entitled to the equivalent of one month's rent. In this case, the tenant moved out on March 31, 2022. Pursuant to section 51(1.1) of the *Act*, "A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord." As the tenant had already withheld the rent for March 2022, the compensation is considered paid. I therefore dismiss the tenant's application for compensation without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of their application. As the tenant was not successful with their application, the tenant must bear the cost of this filing fee.

### **Conclusion**

I dismiss the tenant's entire application without leave to reapply.

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: June 5, 2023