



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

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

The tenants requested:

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

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with sections 88 and 89 of the *Act*, I find that both parties duly served with each other’s Applications and evidence.

Issue(s) to be Decided

Are the parties entitled to the monetary orders requested?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This tenancy began on March 14, 2018, and ended on or about September 23, 2023.

The tenants filed an application on July 25, 2024, requested a reimbursement of a portion of the rent paid for this tenancy. The tenants argued that five months after moving in, the landlord started increasing the rent above the allowable amount. The

tenants testified that they were newcomers, and were not aware of their rights. The tenants testified that the rent was increased several times during the tenancy by requiring the tenants to sign new tenancy agreements, resulting in \$16,826.30 in overpayment of rent during this tenancy. The tenants requested reimbursement of this amount.

The landlords responded that the tenants had agreed to sign multiple tenancy agreements during this tenancy, which was with their knowledge and consent. The landlords argued that the tenancy agreements were signed by the tenants, and the tenants had willingly paid the rent as agreed upon with no issues until several months after they had moved out.

The landlord argued that the additional rent agreed upon reflected the changes in the tenancy as there was a fire, and as the tenants had decided to rent a three bedroom instead of two

The landlord testified that the last tenancy agreement was for a fixed term from October 1, 2023 to February 29, 2024, with monthly rent set at \$2,365.00, payable on the first day of the month. The landlord argued that the tenants moved out on September 23, 2024, without providing a forwarding address, and without paying the rent or utilities for September 2023. The landlord had issued the tenants a 10 Day Notice to End Tenancy on September 16, 2023, and instead of disputing the 10 Day Notice, the tenants had moved out. The landlord is requesting a monetary order of \$2,365.00 for the September rent, and \$118.41 for the unpaid utilities. The tenants confirmed that they had withheld these amounts as they feel that the landlord had owed them money.

The landlord testified that they had mitigated their losses by attempting to re-rent the rental unit as soon as possible, for \$2,300.00 in monthly rent from October 1, 2023 to March 31, 2024. The landlord is seeking \$325.00 in lost rental income (\$65.00x5 months) due to the tenants' failure to continue with the tenancy as agreed upon. The landlord submitted a copy of the tenancy agreements in evidence.

Lastly, the landlord is requesting \$2,700.00 for an extra occupant fee as the tenant had another child.

Analysis

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 both applications and my findings around it are set out below.

Tenants' Monetary Claim

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

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.

The tenants feel that the landlord had avoided the Act by imposing rent increases through the successive signing of new tenancy agreements during this tenancy. It is undisputed that several tenancy agreements were signed during this tenancy, with increasing amounts of rent.

In review of the evidence and testimony before me, I find that that the tenants had signed new tenancy agreements throughout this tenancy, and had paid the amounts as agreed upon. As noted by the landlord, I find that the new tenancy agreements took in account an additional bedroom and bathroom rented by the tenants, as well as a fire in December 2021.

I find that despite the tenants' claim that the landlord was imposing rent increases in contravention of the Act and under duress or coercion, I do not find this belief to be supported in evidence. I find that the tenants had agreed to sign the new tenancy agreements and pay the additional amounts, and did not take issue with this until well past the end of this tenancy. The tenants filed this application on July 25, 2024, after moving out on September 23, 2023. As noted above, I find that the tenancy agreements were signed by both parties, and took into account the changes in the tenancy.

By residing in the rental unit from March 2018 to September 2023, and agreeing to sign the new tenancy agreements and paying the additional amounts, I find that the tenants had clearly confirmed their consent to the new terms of each agreement. I am not satisfied that the rent increase was accepted under duress or coercion. I also do not find the tenancy agreements to be unconscionable as the terms of the tenancy had changed throughout the tenancy, and the parties had taken in consideration the events that had taken place that led to the signing of the new agreements. I find that the tenants had accepted and consented to the new terms, and I therefore dismiss the tenants' application for a refund without leave to reapply.

As the tenants were not successful with their claim, I dismiss their application to recover the filing fee.

Landlord's Monetary Claims

Section 22.1 of the Act restricts a landlord's ability to vary the rent based on the number of occupants for an occupant who is a minor. I find that the extra occupant referenced in this application refers to a child. I therefore find that the landlord is not entitled to an increase in rent for this additional occupant. The landlord's application for the extra occupant fee is dismissed, without leave to reapply.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I find that the tenants did not pay any rent for September 2023, nor the utilities owed for this tenancy. I do not find that the tenants were in possession of any Order that allowed them to deduct these amounts, nor were these amounts withheld for a reason allowed under the Act. Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for September 2023, in the amount of \$2,365.00 and \$118.41 for unpaid utilities.

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenants had entered into a tenancy agreement that was to end on February 29, 2024, but moved out on September 23, 2024 after failing to pay the rent or dispute a 10 Day Notice for Unpaid Rent. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of the tenancy. As noted earlier, I find the tenancy agreements to be valid.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, but for \$65.00 less for the remainder of the term.

I am satisfied that the landlords had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent by re-renting the suite as soon as possible. Accordingly, the landlords are granted a monetary claim of \$325.00 for the lost rental income.

As the landlord's application had merit, I allow the landlord to recover the filing fee.

Conclusion

The tenants' entire application is dismissed, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$2,908.41** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and utilities under section 67 of the Act	\$ 2,483.41
Lost Rental Income	\$325.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$ 2,908.41

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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: December 24, 2024

Residential Tenancy Branch