



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on July 15, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51 and 67; and,
- recovery of the filing fee.

The Tenant attended the hearing. The Landlord also attended the hearing. The Landlord confirmed receipt of the Tenant's application and evidence package, and did not take issue with service of those documents. The Landlord did not submit any documentary evidence.

Both 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.

Issue(s) to be Decided

1. Is the Tenant entitled to 1 Month's worth of rent as compensation, pursuant to section 51 of the Act?
2. Is the Tenant entitled to a monetary order due to an unlawful rent increase?

Background and Evidence

The Tenant stated that she moved into the rental unit in October of 2017, and at that time, rent was set at \$1,500.00. The parties agree that rent was due on the first of the month and that this was a periodic tenancy.

The Tenant stated that sometime in May 2019, she received a 4 Month Notice to End Tenancy for Renovation from the Landlord, and around a week later, the Landlord cancelled that 4 Month Notice. The Tenant stated that following this, they had a series of conversations with the Landlord's father about possibly ending the tenancy, or possibly raising rent. The Tenant stated that the Landlord's father came over to the rental unit, in person, at the end of May and told them verbally that they were not pursuing the 4 Month Notice, but that monthly rent would be raised from \$1,500.00 to \$1,600.00 effective June 1, 2019. The Tenant stated that she had expressed her concern, verbally, that this was more than the allowable annual rent increase of 2.5% for 2019, but out of fear of being evicted the Tenant's partner agreed to pay the increase to minimize conflict. The Tenant stated that they were never given a proper written rent increase notice, and were only ever advised verbally.

The Landlord stated that they were more than fair with the Tenant, and they did not give any rent increases for the first 2 years of the tenancy. The Landlord feels he should be able to raise the rent by \$100.00 because this is the only rent increase he gave to the Tenant over the whole tenancy. The Landlord acknowledged that this was all done verbally, without written notice.

The Tenants started paying \$1,600.00 per month, starting June 1, 2019, and continued to do so until the end of the tenancy in November 2020. The Tenants stated that on October 14, 2020, they received a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice). Although the effective date on the Notice was listed as November 31, 2020, the Landlord stated that it was always meant to be December 31, 2020. Both parties confirmed they understood the effective date to be December 31, 2020.

The Tenants stated that following this, they started looking for a new place to live, but were having challenges finding something suitable right away. The Tenant provided copies of text messages she had with the Landlord, which includes a text message she sent to the Landlord on November 4, 2020, whereby the Tenant informed the Landlord that she would be moving out within 10 days, by November 15, 2020. The Landlord replied to this text message the same day, as per the text messages provided into evidence. The Tenant stated that they moved out on November 15, 2020, as planned.

The Tenant acknowledged that the Landlord returned one half month's rent, for the last half of November, but the Landlord never provided them with one full month's rent as compensation, pursuant to section 51 of the Act.

The Landlord stated that it was the Tenant's choice to leave early, and she could have stayed and lived in the rental unit for the month of December at no cost, but he does not feel he should have to pay the Tenant when she was the one who decided to leave early.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the Tenant's request to obtain one months' compensation based on the Notice, pursuant to section 51 of the Act. The Tenant pointed out that they received the 2 Month Notice on October 14, 2020. This Notice was effective December 31, 2020, which is the day before rent is due and is at least 2 months after the Notice was received.

First, I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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.*

In this case, I find the Landlord is obligated to compensate the Tenant, pursuant to section 51 of the Act, in the amount of \$1,600.00, which is equivalent to one months' rent. This amount is compensable upon the Tenant's receipt of the Notice.

I also note the following portion of the Act:

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], 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, 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 note the Tenant sent a text message to the Landlord on November 4, 2020. The Landlord does not refute getting this, and responding to it. In fact, the text message evidence shows the landlord responded and conversed with the Tenant on this issue that day. I find this text message counts as the Tenant's 10 Day Notice pursuant to section 50(1) of the Act. There does not appear to be any confusion about the fact the Tenant wanted to move out 10 days later, on November 15, 2020, and prior to the effective date of the Notice. I find the tenancy ended on November 15, 2020, the date the Tenant's notice took effect, and the date they moved out.

I note the Landlord has already refunded the remainder of November rent, so the Tenant did not overpay for that month. However, I find the Landlord is still obligated to pay the Tenant \$1,600.00, pursuant to section 50 and 51 of the Act, since the Tenant's never received a free month's rent before their tenancy ended. I award this item in full.

Next, I turn to the Tenant's application to recover rent that was overpaid due to an unlawful rent increase.

Part 3 of the Act and Policy Guideline 37 to the Act explain the requirements a landlord has to follow in order to affect a legal rent increase.

I note the following portions of the Act:

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.

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.

[...]

(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.

I note the Landlord only provided a verbal rent increase to the Tenants, and it does not appear any proper written notice, on the approved form, was given to the Tenant. I do not find a verbal notice of rent increase is sufficient for this part of the Act, and although the Tenant paid the rent increase, it appears they were concerned about being evicted and paid this amount to prevent any further escalation or eviction. There is no evidence this rent increase was agreed to in writing, and I find it has not been affected in accordance with the Act. I do not find a verbal agreement, and subsequent payment of the increased amount is sufficient to make this a lawful rent increase.

For the above reasons, I find the rent increase from \$1,500.00 to \$1,600.00 which took effect June 1, 2019, was unlawful, and not in compliance with the Act. Rent should have remained at \$1,500.00 until a lawful Notice of Rent Increase was issued. I find the Tenant is entitled to recover the rent overpayments of \$100.00 per month for June 2019 – October 2020 (17 months), plus \$50.00 for the half months rent in November 2020. I find the Tenants are entitled to \$1,750.00 for this item. However, the Tenant was only seeking \$1,093.75 on her application form which she stated allows for the Landlord to collect the allowable 2.5% annual rent increase for 2019. In summary, the Tenants only

applied to recover an overpayment of \$62.50 per month, which took into account the amount the Landlord could have recovered legally under the Act if they pursued a 2.5% increase in compliance with the Act. As this is what the Tenant applied for, the award for this item will be limited to \$1,093.75.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I find the Tenant is entitled to a monetary order as follows:

- \$1,600.00 for one months' compensation due under section 51 of the Act
- \$1,093.75 for an unlawful rent increase
- \$100.00 for the cost of the filing fee
- Total: \$2,793.75

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of \$2,793.75. 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: July 15, 2021

Residential Tenancy Branch