



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

DRI

CNR

MNDC

OLC

FF

### Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated January 9, 2009, to dispute a rental increase imposed in a manner that was not compliant with the Act and a monetary order for compensation to the tenant for an illegal rent increase imposed on January 1, 2009. Both the landlord and the tenant appeared and each gave affirmed testimony in turn. An advocate for the tenant also appeared.

### Issue(s) to be Decided

The tenant was seeking to cancel the Ten-Day Notice for Unpaid Rent, to Dispute the Notice of Rent Increase and to be compensated in full for an illegal rent increase. Therefore the issues to be determined based on the testimony and the evidence are:

- Whether or not the tenant is entitled to be reimbursed for excessive rent paid. This is contingent upon whether or not the Notice of Rent increase was compliant with the Act:
- Whether the Notice of Rent Increase should be cancelled and found to be of no force nor effect for being noncompliant with the Act and Regulations. This requires answers to the following questions
  - Was the Notice of rent increase compliant with the regulation having been issued on the requisite form completed properly, served on the tenant, and was the amount of the increase also compliant with the percentage permitted under the regulations?

If Not...

- Did the landlord instead obtain the tenant's written consent of the proposed rent increase at least three months prior to imposing the new rate?
- Was the Ten-Day Notice for Unpaid Rent supported or should it be cancelled?

The burden of proof is on the landlord to establish that the Notice of Rent Increase complied with the Act and that the Ten-Day Notice was valid. The tenant bears the burden of proof in regards to the tenant's claims for reimbursement.

### **Background and Evidence**

The tenant submitted into evidence, a copy of the recent Notice of Rent Increase dated September 10, 2008, purporting to be effective January 1, 2009 to increase the rent from \$760.00 to \$788.12 per month, a copy of a Ten-Day Notice to End Tenancy for

Unpaid Rent showing that the tenant was in arrears for rent on January 9, 2009 for \$28.12 and a copy of a letter from the landlord to the tenant dated September 10, 2008.

The tenant testified that the Notice of Rent Increase, although dated September 10, 2008, was posted on the door on September 29, 2008 and therefore deemed service under the Act would be October 1, 2008. The tenant testified that this increase, if valid, would therefore not take effect until February 1, 1009, not January 1, 2009 as indicated by the landlord. Given this fact, according to the tenant, the Notice to End Tenancy dated January 9, 2009 would not be supported as the tenant's rent of \$760.00 was paid in full for the month of January 2009.

The tenant testified that the Notice of Rent Increase was unsigned and therefore is not valid in any case. The tenant testified that the notice should be cancelled on this basis as it cannot be enforced by the landlord.

In regards to the tenant's monetary claim for \$28.12, the tenant testified that this amount was paid in January in response to the unwarranted Ten-Day Notice and it should be refunded to the tenant. The tenant is also claiming reimbursement for the \$50.00 fee paid for the application.

The landlord did not dispute that the Notice of Rent Increase was served by posting on the door on September 29, 2008 and did not dispute that the document was noncompliant in that it was not signed.

The landlord also made a commitment, at the tenant's request, to fully comply with the Act in future.

The tenant took issue with the fact that the landlord's representative appearing at the hearing was not a licensed property manager and challenged this individual's right to appear on behalf of the landlord.

### **Analysis - Dispute Rent Increase imposed in January 2009**

Section 43 of the Act does allow a landlord to impose a rent increase 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.

However, Section 42(3) states that a notice of a rent increase must be in the approved form. I find that the approved form includes a line where the landlord must sign the Notice to make it valid and that the landlord neglected to sign the Notice posted on September 29, 2009 and therefore I find that it must be cancelled.

Section 43(5) provides that if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase.

Accordingly, I find that the tenant's payment of \$28.12 over and above the rent of \$760.00 may be recovered by the tenant.

### **Analysis - Cancel Ten Day Notice to End Tenancy for Unpaid Rent**

In regards to the Ten-Day Notice issued January 9, 2009, I find that the notice is not in effect by virtue of the fact that the tenant was not in arrears at the time that the notice was issued.

### **Analysis - Other Matters**

In regards to the issue raised by the tenant about the landlord's right to have an agent of its choice appearing at the hearing, I note that Residential Tenancy Rules of Procedure, Rule 8, Conduct of The Dispute Resolution Proceeding, states *that, "A party to a dispute resolution proceeding may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation."* I find that this rule applies equally to both a landlord and a tenant and that there is no reason why the landlord would be restricted in regards to representation at a hearing.

## **Conclusion**

Based on the testimony and evidence presented during these proceedings I make the following orders:

I order that the Notice of Rent Increase dated September 10, 2008 and effective January 1, 2008 is hereby cancelled and of no force nor effect as it is noncompliant with the Act and Regulations.

I order that the Ten-Day Notice to End Tenancy for Unpaid Rent dated January 9, 2009, is hereby cancelled and of no force nor effect.

I order that the rental rate for this residence will remain at \$760.00 per month plus parking unless and until a valid compliant Notice to Increase Rent has been properly served on the tenant.

I find that the tenant is entitled to compensation of \$78.12 comprised of \$28.12 excessive rent paid for the month of January and the \$50.00 fee paid by the tenant for this application and I hereby order that the tenant s at liberty to reduce rent payable to the landlord by this amount as a one-time abatement to satisfy the amount owed.

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February, 2009

Date of Decision

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Dispute Resolution Officer