



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, CNR, FF

Introduction

This matter dealt with an application by the tenant to dispute an additional rent increase requested by the landlord, to cancel a Notice to End Tenancy and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the landlord by registered mail on June 15, 2009. The landlord confirmed he had received them on June 23, 2009.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached

Issues(s) to be Decided

- Has the landlord increased the rent by the correct amount for 2009?
- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Should the landlords Notice to End Tenancy be upheld? If so does the landlord want an Order of Possession?
- Is the tenant entitled to recover his filing fee?



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Background and Evidence

This tenancy started on March 15, 2003. At that time the rent was \$648.00 per month. The rent has risen in increment stages to \$710.00. In August, 2008 the landlord issued a Notice to increase the rent by \$26.30 per month to take effect on December 01, 2008. The tenant disputed this rent increase and a hearing was held on May 20, 2009. During the course of this hearing a settlement was reached with the tenant agreeing to pay the rental arrears of \$210.40.

Since this time the tenant has not paid the rental arrears and on June 06, 2009 the landlord issued the tenant with a 10 Day Notice for unpaid rent. This Notice was posted on the tenants' door. The tenant was deemed to have been served three days after this notice was posted. The tenant disputed this notice on June 12, 2009.

The tenant states that he was confused about the information available in the tenancy Act about the amount of rent increase the landlord was allowed to impose. I directed the tenant to the *Residential Tenancy Branch* website which clearly states that the amount of rent increase the landlord may impose for 2008 and 2009 is 3.7%. Therefore the amount the landlord would have been allowed to increase the rent would have been \$26.27 not \$26.30.

The tenant has paid \$710.00 for his rent for July, 2009. The landlord has requested an Order of Possession to take effect at the end of July, 2009

Analysis

The landlord had increased the rent to \$26.30 because he had rounded up the figures. The Residential Policy Guidelines #37 state that the rent increase cannot exceed the

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percentage amount, a landlord should not round up any cents left in calculating the allowable increase. Therefore, I uphold this portion of the tenants' application to dispute an additional rent increase and set the increase to \$26.27 until December 01, 2009

I find that the landlords 10 Day Notice to End Tenancy was valid. The tenant does owe rent arrears of \$210.16. The tenant does not dispute this now he understands that the landlord is able to increase the rent by \$26.27 per month. This consists of the additional rent the tenant should have been paying since December 01, 2008. Therefore, due to the above and by taking into consideration that at the last hearing held in May, 2009 the tenant did agree to pay the landlord the rent arrears and has failed to do so I dismiss this portion of the tenant's application without leave to reapply.

I uphold the landlords 10 Day Notice to End the Tenancy and issue an Order of Possession effective on July 31, 2009. Although this was the tenants application I also Order that he pay the landlord the rent arrears of \$210.16 as agreed on at the hearing held in May, 2009.

As the tenant has not been successful in this matter he is not entitled to recover his filing fee from the landlord.

Conclusion

The Tenant's application is dismissed. The 10 Day Notice to End Tenancy for unpaid rent will remain in force and effect. I hereby issue an Order of Possession in favour of the landlord effective on July 31, 2009. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I also find that the landlord is entitled to recover the unpaid rent as agreed in the hearing on May 20, 2009. A copy of the landlord's decision will be accompanied by a Monetary



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Order for **\$210.16**. The order must be served on the tenant and is enforceable through the Provincial Court 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 02, 2009.

Dispute Resolution Officer