



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes CNL, MNDC, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to cancel a two month Notice to End Tenancy, for compensation due to an illegal rent increase, and to recover the filing fee for the Application.

An advocate for the Tenant appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Notice of Hearing and Application of the Tenant were personally served on an Agent for the Landlord on February 7, 2010. Despite this, no one appeared for the Landlord. I find the Landlord has been served in accordance with the Act.

### Issues(s) to be Decided

Is the two month Notice to End Tenancy valid or should it be cancelled?

Is the Tenant entitled to recover the alleged overpayment of rent?

### Background and Evidence

The tenancy began in May of 2009, with the Landlord and Tenant entering into a written tenancy agreement. The monthly rent was set at \$700.00 per month.

The Tenant had sold the property which contains the rental unit to the Landlord sometime prior to May of 2009. The Tenant rented it back from the Landlord and a term of the tenancy agreement was that the Tenant could live in the rental unit, "... until she died or no longer wanted to live there [in the rental unit]."

In July of 2009, the Tenant's grandson moved into the rental unit to help the Tenant, as she suffers from poor health. The Landlord increased the monthly rent to \$1,100.00, an increase of \$400.00 per month. The Tenant paid the increased rent in July, August, September, October, November and December of 2009; an alleged overpayment of \$2,400.00.

On or about February 2, 2010, the Landlord served the Tenant with a two month Notice to End Tenancy, indicating that the Landlord wanted to occupy the rental unit as the reason the Landlord wanted to end the tenancy.

The Tenant submits that the Landlord may not end the tenancy this way as she has not determined she does not want to live there anymore.

### Analysis

Based on the uncontradicted testimony and evidence, and on a balance of probabilities, **I find that the Landlord has breached the Act by imposing an illegal rent increase.**

The Landlord may not increase the rent beyond what is allowed under the Act and regulation. An increase of \$400.00 per month is a 57% increase in rent, well in excess of the allowed increase of 3.7% for 2009.

I order that the rent will remain at \$700.00, until it is increased in accordance with one of the methods in the Act or regulation.

Therefore, I find the Tenant has overpaid rent and I order the Landlord to repay the overpayment of rent, in the amount of \$2,400.00. **The Tenant may deduct the sum of \$2,400.00 from future rent payments.**

In regard to the two month Notice to End Tenancy for the Landlord's use, I find that the Landlord may not end the tenancy in this manner. The tenancy agreement is a form of a fixed term agreement, allowing the Tenant to remain in the rental unit until she passes away, or decides she does not want to live there anymore. Neither of these events apply to the current situation. **Therefore, I order that the two month Notice to End Tenancy issued on February 2, 2010, is cancelled and is of no force or effect.**

As the Tenant has been successful in the Application, she may deduct an additional **\$50.00** from one month of rent to recover the filing fee for the Application.

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: March 22, 2010.

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Dispute Resolution Officer