



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF, OLC, MNR, OPR

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for an order for the landlord to comply with the Residential Tenancy Act. The tenant is also requesting recovery of her filing fee.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a monetary order for outstanding rent, and a request for recovery of the filing fee.

### Background and Evidence

There are two main issues in dispute in these two applications.

The first issue is what the legal monthly rent is for this unit, and how much rent the tenant is supposed to be paying per month.

The second issue is a dispute over how much rent has been paid for the term of this tenancy and whether or not there is any outstanding rent.

This tenancy agreement began on December 15, 2010, however the tenant moved into the rental unit early and paid an extra \$500.00 to cover the extra time in the rental unit.

In the original tenancy agreement the rent was set at \$1000.00 per month and all the utilities were included in the rent.

### First issue

With regards to the first issue, the landlord has argued that the tenants signed an addendum to the original tenancy agreement agreeing to an increase in the rent to \$1200.00 per month as of May 1, 2011, and agreeing to start paying 50% of the utilities, which had previously been included in the rent, as of May 1, 2011. He further stated that the tenant also agreed to increase the security deposit by \$100.00 to \$600.00 as of May 1, 2011.

The tenant has argued that she believes that this rent increase is not legal and that the rent should remain at \$1000.00 per month and include utilities.

### Second issue

The landlord has issued a Notice to End Tenancy to the tenant that states that \$1200.00 in rent is outstanding and has provided rent receipts which he believes shows the amount outstanding. He also agrees that there was a further \$500.00 paid in cash for which no receipt was issued.

The landlord is therefore requesting an Order of Possession based on the Notice to End Tenancy, and is requesting an order for the outstanding rent plus utilities.

The tenant has argued that she believes the landlord has not accounted for the \$500.00 extra she paid in cash and that at this time there is no rent outstanding. The tenant further argued that the extra \$500.00 was to cover the period from November 15 to November 30, 2010, and therefore her first \$1000.00 payment should have covered the rent from December 1, 2010, and not from the 15th of December 2010.

The tenant is therefore requesting that the order possession be cancelled and that the monetary order be denied.

### Analysis

#### First issue

It is my finding that the rent for this rental unit is \$1000.00 per month and that all utilities are included.

The Residential Tenancy Act only allows the landlord to raise the rent 12 months after the start of the tenancy, and therefore even if there is addendum to the tenancy agreement raising the rent earlier than the 12 month period, that addendum is not enforceable as it does not comply with the requirements of the Residential Tenancy Act.

Further since utilities are included in the original tenancy agreement, any requirement of the tenant to start paying a portion of those utilities is considered a hidden rent increase, and again would be unenforceable.

Therefore it is my decision that the tenant does not have to pay for utilities and the monthly rent payable is \$1000.00 per month.

### Second issue

The tenant has admitted that she moved in on November 15, 2010 and agreed to pay an extra \$500.00 to cover the rent up until the date the tenancy was supposed to start. Therefore since this tenancy was supposed to start on December 15, 2010, the total amount of rent that should have been paid by the date the Notice to End Tenancy was given is as follows:

Extra agreed on to move in early	\$500.00
December 15, 2010 payment	\$1000.00
January 15, 2011 payment	\$1000.00
February 15, 2011 payment	\$1000.00
March 15, 2011 payment	\$1000.00
April 15, 2011 payment	\$1000.00
May 15, 2011 payment	\$1000.00
Total	\$6500.00

The tenant has provided proof of having paid the following rent amounts:

Extra agreed on to move in early	\$500.00
December 1, 2010 paid \$1250.00 receipt, \$1000.00 of which was rent	\$1000.00
January 15, 2011 receipt	\$1000.00

February 15, 2011 receipt	\$1000.00
April 1, 2011 receipt	\$1000.00
April 24, 2011 receipt	\$1200.00
Total	\$5700.00

The tenant also argued that the December 1, 2010 payment was to cover rent from the first of December 2010, and seemed to think that this meant she owed less money, however since the landlord was only charging rent from December 15, 2010 on, she would have owed another \$500.00 if rent was being charged from December 1, 2010 on.

The tenant has shown that she is paid a total of \$600.00 for security deposit.

The landlord has provided evidence of rent payments as follows:

Extra payment to move in early	\$500.00
December 23, 2010 payment	\$1000.00
January 15, 2011 payment	\$1000.00
February 15, 2011 payment	\$1000.00
April 1, 2011 payment	\$1000.00
April 24, 2011 payment	\$1200.00
Total	\$5700.00

The landlord also agrees that the tenant has paid a total of \$600.00 security deposit.

Therefore it is my finding that since the tenant should have paid \$6,500.00 in rent, and yet both sides agree that she only paid \$5,700.00 in rent, she still owed \$800.00 at the time that the Notice to End Tenancy was given. However since the tenant has overpaid the security deposit by \$100.00, she actually only owed \$700.00 if that \$100.00 overpayment is applied towards the outstanding rent.

I therefore will not be setting the Notice to End Tenancy aside and I will issue an Order of Possession to the landlord along with a monetary order for the outstanding rent.

I also order that each side bear the cost of the filing fee that they paid for their application for dispute resolution, because I have only allowed a portion of each of their claims.

### Conclusion

The tenants request to cancel the Notice to End Tenancy is dismissed.

I have issued an order possession to the landlord that is enforceable two days after service on the tenant, and I have issued a monetary order in the amount of \$700.00.

I make no order with regards to the June 15, 2011 rent, because that rent was not due at the time that these applications were filed, however the landlord is at liberty to apply for an order for any outstanding June 2011 rent.

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: June 27, 2011.

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Residential Tenancy Branch