



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI, MT, O  
OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the tenant is to cancel a notice to end tenancy for unpaid rent, to dispute an additional rent increase, to allow the tenant more time to file their application and other. The application by the landlord is for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began February 1, 2003 with monthly rent of \$550.00 and the tenant paid a security deposit of \$550.00.

On February 2, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid rent.

The tenant testified that as she received the notice to end tenancy on February 9, 2012 and made her application on February 10, 2012 that the tenant did not require more time to file an application. This portion of the tenant's application is therefore dismissed.

The landlord testified that the tenant has not paid the \$800.00 February 2012 rent. The landlord stated that the tenancy agreement shows that rent is \$800.00 and that he had only let the tenant pay a lower rent at the start of the tenancy because she was in a difficult financial situation. The landlord also stated that laundry is not included and the tenant should be paying at least \$100.00 per month for this facility but has not.

The tenant stated that on December 1, 2008 at the start of the tenancy, she and the landlord signed a tenancy agreement that notes the rent as \$800.00 per month and that this was done so that the tenant could qualify for government assistance.

The tenant stated that from the start of the tenancy she paid \$550.00 per month rent and that on July 28, 2011 the landlord gave the tenant a letter stating that due to the high hydro bills that the rent was being increased from \$550.00 per month to \$650.00 per month effective September 2011. The tenant stated as per the notice from the landlord, she has been paying \$650.00 per month effective September 2011. The tenant stated that when she learned that this rent increase was not in accordance with the Act that per the Act, the tenant deducted the \$600.00 overpayment and applied that to the February 2012 rent along with a cheque for \$50.00.

The tenant stated that due to on-going problems with the landlord that she has found alternate housing and will be vacating the rental unit February 29, 2012. The tenant stated that all of the mail goes to a communal mailbox and the landlord has been purposely withholding her mail.

The landlord reiterated that he stood by his 2008 tenancy agreement and the amount of rent due each month.

### Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to an order of possession for unpaid rent, a monetary order for unpaid rent or to keep all or part of the security deposit.

The landlord must prove he has cause to end this tenancy and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The tenant has submitted into evidence, a 'Verification of Residence' that establishes the tenant's rent as \$550.00; this document is dated February 1, 2003 and signed by the landlord. The tenant has also entered into evidence, a letter to the tenant from the landlord stating that due to the high hydro bills, the rent is being increased from \$550.00 to \$650.00 effective September 1, 2011. The tenant has also submitted a ledger, bank payment history and copies of cancelled cheques that date back to January 2011 which show rent payments of \$550.00 and then in September 2011 rent payments of \$650.00. This evidence as a whole clearly establishes the tenant's rent as \$550.00 and not \$800.00 as the landlord claims.

And while it is understood that the landlord now wishes to establish the rent as \$800.00 based on the 2008 tenancy agreement, the tenant's evidence clearly shows the rent being \$550.00 at the start of and through most of the tenancy with a \$100.00 rent increase in September 2011. I therefore find that the landlord has failed in his burden of proving he has cause to end this tenancy.

In regards the landlord's notice of rent increase, this notice does not meet the service requirements as outlined by the Act nor is this rent increase notice in the approved form.

As the tenant has overpaid the rent \$100.00 for the months of September 2011 through January 2012, the tenant per the *Act* may deduct this overpayment of rent from future rent which the tenant has. Therefore with the \$500.00 overpayment and the additional \$50.00 payment, the February 2012 rent is in fact, paid in full.

Residential Tenancy Policy Guideline **37 Rent Increases** speaks to:

*If a landlord collects a rent increase that does not comply with the Legislation, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected. In those circumstances, the landlord may issue a new 3 month Notice of Rent Increase, as the original notice did not result in an increased rent.*

In regards to the landlord with holding the tenants mail, if in fact this is occurring the landlord needs to immediately stop with holding the tenant's mail and provide any held mail to the tenant.

The landlord's 10 Day Notice to End Tenancy for Unpaid rent dated February 9, 2012 is hereby set aside.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

### Conclusion

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated February 9, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

The landlord's application is dismissed without leave to reapply.

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: February 22, 2012

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Residential Tenancy Branch