



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

*CNR, MNDC, OLC*

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent. The tenant also applied for a monetary order for compensation and for an order directing the landlord to comply with the *Act*.

Both parties attended the hearing and had opportunity to be heard.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy began on January 03, 2007. The monthly rent was \$595.00 until it was increased to 616.84, effective September 01, 2012.

On August 14, 2012, a hearing was convened to address the tenant's application for compensation and for an order for repairs. The landlord did not attend the hearing. The Arbitrator dismissed most of the tenant's application and awarded the tenant a rent reduction of \$25.00 per month until the landlord had the rodent problem treated professionally and a further reduction of \$50.00 until the landlord repaired the dryer, provided sheets and towels and restored the phone answering device. This reduction was effective September 01, 2012.

On May 27, 2012, the landlord had served the tenant with a notice of rent increase which became effective on September 01, 2012. The tenant stated at the hearing that he had not been served the notice of rent increase and was therefore unaware of the increase. The tenant further added that the amount of unpaid rent on the notice to end tenancy did not include a rent increase.

The landlord stated that he had served the notice to the tenant by posting the notice on the front door in the presence of the manager. The manager testified that in August, she had had two discussions with the tenant regarding the rent increase.

During the hearing, it was determined that the landlord had not hired a professional pest control company to treat the rodent problem and therefore as per the decision of the arbitrator dated August 14, 2012, the tenant was entitled to a rent reduction of \$25.00 per month until the landlord did so.

Also during the hearing, the landlord agreed that he had not completed all the tasks that he was ordered to do and therefore, I determined that the rent reduction of \$50.00 per month was still in effect.

The tenant stated that he was not aware of the rent increase and on September 01, 2012, he paid his full rent of \$595.00 which did not include the rent increase. The landlord accepted his rent and did not indicate that it was incorrect. On October 01, he decided that he would make a deduction of \$75.00 for each of the months of September and October. Due to a miscalculation, he deducted \$155 from his rent instead of \$150.00.

On October 09, the landlord served the tenant with a notice to end tenancy for nonpayment of rent that was due on October 01 2012, in the amount of \$155.00. The landlord did not include the amount of the rent increase, as per the notice he gave the tenant in May 2012.

The landlord made a request for an order of possession in the event that I upheld the notice to end tenancy.

The tenant has also applied for a monetary order of \$100.00 for the time he spent putting his application for dispute resolution together and for an order directing the landlord to comply with the *Act*, and allow him the rent reduction as per the decision dated August 14, 2012.

**Analysis:**

Based on the sworn testimony of the both parties, I find that a valid rent increase of \$21.84 took effect on September 01, 2012. I further find that the tenant was and still is entitled to a rent reduction of \$75.00 per month effective the same date, pursuant to the decision dated August 14, 2012.

The notice to end tenancy does not take the rent increase into account and states that the tenant owed \$155.00 in unpaid rent. As per the decision, the tenant was entitled to hold back \$150.00 for the two months. The tenant agreed that he held back \$155.00 in error instead of \$150.00.

The amount of unpaid rent noted on the notice to end tenancy, indicates that the rent increase was not yet in effect. The landlord issued the notice of rent increase and therefore should have known that it was effective on September 01. In addition, the landlord ought to have known that the tenant was awarded a rent reduction in the amount of \$75.00 per month effective September 01 and this is the amount that the tenant held back.

I find that the landlord did not put the tenant on notice to allow the tenant five days to pay the rent increase but instead issued him a notice to end tenancy for an amount (less \$5.00) that he was entitled to deduct off his rent, pursuant to the decision dated August 14, 2012.

For these reasons, I find that I must set aside the notice to end tenancy. The landlord may serve a notice to end tenancy for nonpayment of the increased rent but may not serve a notice to end tenancy for an amount that the tenant is entitled to deduct off his rent.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the tenant's claim for \$100.00 as compensation for the time spent to make this application is dismissed.

### **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue. The remainder of the tenant's application is dismissed.

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: November 14, 2012.

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Residential Tenancy Branch

