



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, DRI, MNDC, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy and the one month Notice to End Tenancy both dated June 5, 2013 were sufficiently served on the Tenants by mailing, by registered mail to where the tenants reside. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on June 13, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling a 10 day Notice to End Tenancy dated June 5, 2013?
- b. Whether the tenants are entitled to an order cancelling a one month Notice to End Tenancy dated June 5, 2013?
- c. Whether the Tenants are entitled to an order disputing an additional rent increase?

- d. Whether the tenants are entitled to a monetary order and if so how much?
- e. Whether the tenants are entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on August 1, 2009. The tenancy agreement provided that the tenant(s) would pay rent of \$1600 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$750 on June 1, 2011.

In September 2012 the landlords advised the tenants that they would be taking an office space and entry way which had previously been used by the tenant and giving it to the downstairs tenant. The landlord agreed to delay this until the tenant's father in law left at the end of September.

The rental unit is 3 bedroom and approximately 1800 square feet in size. The portion in the basement taken back by the landlord was between 100 square feet (landlord's estimate) and 150 square feet (tenant's estimate). The tenant is seeking compensation in the sum of \$200 per month for the loss of space commencing October 1, 2013 and ending June 30, 2013 or the sum of \$1800.

The landlords served a Notice of Rent Increase dated June 1, 2013 the purported to increase the rent from \$1600 to \$1660.80 starting on August 1, 2013. It was received by the tenants on June 7, 2013. Thus it was not received by the tenants to be effective on August 1, 2013.

### Analysis

#### Application to Cancel the 10 day Notice to End Tenancy and the one month Notice to End Tenancy:

The landlord acknowledged the tenants have paid the arrears of rent and the landlord has agreed to reinstate the tenancy. As a result I ordered that the 10 day Notice to End Tenancy dated June 5, 2013 and the one month Notice to End Tenancy dated June 5,

2013 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Application disputing an Additional Rent Increase:

The tenants submit that the landlord has taken a portion of the rental unit from them and given it to the downstairs rent. They submit that there should be a reduction of rent to reflect this. The tenants submit the landlord has been able to charge the downstairs tenant an additional \$200 and this should be deducted from the tenants' rent. The landlord disputes this. He submits the tenant has taken over the entire two car garage and has been compensated in this way. The tenant says the 2 car garage was a service of facility that was part of the original tenancy agreement.

I determined the tenants are entitled to compensation for the reduced value of the tenancy caused by the reduction in the size of their unit. The downstairs portion of the unit and hallway was used as an office and is similar to a storage facility as part of the definition of "service and facility" in the Residential Tenancy Act. However, I do not agree with the submission of the tenants that the rent should be reduced by \$200 per month. I determined the rental unit is 1800 square feet in size. The landlord had the greatest knowledge of the size of the rental unit and I determined it was appropriate to use his estimates. I determined the portion of rental unit taken away from the tenants is 100 square feet. The rental unit was 1800 square feet prior to that. I determined the rent should be reduced in proportion to the size that was taken away or by the sum of \$89 per month (100 square feet divided by 1800 square feet multiplied by the rent of \$1600 = \$89 per month).

As a result I determined the current rent is \$1511 per month payable on the first day of each month. The landlord served a Notice of Rent Increase dated June 1, 2013 claiming the prescribed amount permitted by Regulations. However, that Notice was based on a current rent of \$1600 and not \$1511. The increase permitted by Regulations (3.8% in 2013) using as the current rent of \$1511 is \$57.41. Thus I

determined the new rent is \$1568.41. The Act provides that a landlord must give the tenant 3 months clear notice of a Rent Increase. The Notice of Rent Increase was not received by the tenants until June 7, 2013. The Notice sets the date of the increase as August 1, 2013. However, this is not 3 months as required by the Act. I determined the effective date of the rent increase is September 1, 2013.

Monetary Order:

The Application for Dispute Resolution seeks a monetary order in the sum of \$1800 in compensation for the reduced value of the tenancy for 9 months commencing October 1, 2013 at \$200 per month. I determined the amount claimed by the tenants is excessive. However, they are entitled to a rent reduction of \$89 per month for 10 months (which would include July 2013). Thus the tenants are entitled to a monetary order in the sum of \$890.

**I ordered that the landlords pay to the Tenants the sum of \$890 plus \$50 for the cost of the filing fee for a total of \$940 such sum may be deducted from future rent.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In summary I ordered that the 10 day Notice to End Tenancy and the one month Notice to End Tenancy be cancelled. I determined that the tenants are entitled to a reduction of rent in the sum of \$89 per month to reflect the portion of the rental unit taken from them and given to the downstairs tenants.

I determined that the current rent is \$1511 per month payable on the first day of each month. The landlord is entitled to increase the rent in accordance with the Notice of Increase with the exception the landlord must use a current rent of \$1511 and not \$1600. Thus the permitted increase is \$57.41 increasing the rent to \$1568.41 commencing September 1, 2013.

I further ordered the tenants were entitled to compensation for the reduced value of the tenancy in the sum of \$890 for the 10 months they have been without the use of the downstairs portion. I ordered that the landlords pay to the Tenants the sum of \$940 including the cost of the filing fee.

The landlord alleged the tenant is using the entire 2 car garage where he is entitled to only half of it. The tenant disputes this. If the parties are unable to come to an agreement either party has liberty to file an application for a determination on this issue.

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 10, 2013

---

Residential Tenancy Branch

