



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NJM Holdings  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

CNR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The tenant and an agent for the landlord company attended the call and the tenant was accompanied by an observer for morale support. The landlord did not object, and the observer did not testify and did not take part in the proceedings. The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$400.00 per month was originally payable in advance on the 1<sup>st</sup> day of each month, which was increased by \$15.00 per month effective September 1, 2013. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant was personally served with a Notice of Rent Increase, using the approved form, on May 26, 2013. A copy has been provided, and it is dated May 26, 2013 showing current rent of \$400.00 per month, increasing it by \$15.20 per month, for a new rental amount of \$415.00 payable starting on September 1, 2013. She stated that the \$.20 was not added into the total new amount payable.

The landlord's agent attempted to collect the increase by speaking to the tenant every couple of months reminding him to take the appropriate paperwork to the Ministry, who pays the tenant's

rent, and reminding the tenant that he was getting further behind in rent. The tenant continued to agree to do it, but never paid the increase. In June, 2014, the tenant asked the landlord's agent for another copy of the notice increasing the rent to give to the Ministry, but the landlord's agent did not have a photocopier so she re-wrote one and inadvertently wrote that the increase was \$20.00 per month instead of \$15.20. The one given to the tenant in May, 2013 raised the rent by \$15.00 per month.

The owner of the apartment has waited a whole year for the tenant to start paying the increase, and attempts have been made to collect it, but since the tenant has not paid it, the owner asked the landlord's agent to issue a notice to end tenancy.

On September 1, 2014 the landlord's agent personally served the tenant with both pages of a 2-page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities along with another notice of rent increase. Copies of both documents have been provided for this hearing. The notice to end tenancy is dated September 1, 2014 and contains an expected date of vacancy of September 11, 2014 for unpaid rent in the amount of \$180.00 that was due each month in 2013 and 2014. The landlord's agent testified that the full amount of the rent increase that the tenant failed to pay is \$15.00 per month from September 1, 2013 to the end of August, 2013, totalling \$180.00. The Notice of Rent Increase is dated August 31, 2014 and states that the date of the last increase came into effect on September 1, 2013, the current rent is \$415.00, the increase is \$9.15, and the new rent will be \$424.15 starting on December 1, 2014.

The landlord has provided a copy of a notice of rent increase which increases rent by \$15.00 per month and the tenant has provided a copy which increases rent to by \$20.00 per month. Both are dated May 26, 2013.

The tenant testified that the landlord's agent is incorrect with respect to when the tenancy began, and testified that he actually moved into the rental unit in December, 2011.

The tenant further testified that the only rent increase he received was on May 26, 2013 and it stated that rent was increased by \$20.00 per month, and the tenant disagrees that the landlord is legally entitled to increase it by that amount. The tenant did not dispute it but did not pay any portion of the rent increase. The tenant also received the Notice of Rent Increase dated August 31, 2014 by registered mail on or about October 3, 2014. The tenant denies ever receiving the notice of rent increase showing that the new rental amount was \$415.00 effective September 1, 2013. The tenant also denies receiving an additional copy of one in June, 2014.

The landlord has condoned the tenant's failure to pay any increase, having accepted \$400.00 per month throughout the tenancy and the tenant denies that the landlord's agents reminded him to take paperwork to the Ministry or reminding the tenant that he was getting further into arrears; there was not a word of complaint.

### Analysis

The *Residential Tenancy Act* and the regulations specify what amount by way of a percentage rate that rent can be increased. The tenant's position is that the notice of rent increase that he received in May, 2013 was in excess of the amount the landlord is entitled to. The tenant didn't dispute it, but simply ignored it, and the landlord has issued a notice to end tenancy for the increase that the tenant didn't pay. The tenant doesn't dispute that he didn't pay any portion of it.

The *Act* also states: "**43** (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this part;" and, "**43** (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase."

In this case, the tenant didn't dispute the notice of rent increase that he testified that was received in May, 2013, and the landlord didn't collect any increase. The landlord denies that the increase of \$20.00 was the notice that was served on the tenant in May, 2013, but was given to him in error in June, 2014 when the tenant requested a copy. She also testified that the one given to him in May, 2013 contained an increase of \$15.20, and that the \$.20 was forgiven, raising the rent by \$15.00 per month. I find that testimony to be consistent with the latest notice of rent increase.

The tenant also takes the position that the landlord didn't complain about the unpaid rent, accepted \$400.00 per month throughout the year, and therefore condoned the lower amount of rent. The landlord's agent testified that the tenant was reminded and that the landlord accepts that some tenants have little means, so verbal reminders finally resulted in a notice to end tenancy.

The only defence to disputing a notice to end tenancy for unpaid rent is fraud alleged against the landlord. I cannot find that the landlord has fraudulently provided evidence or attempted to collect \$180.00 over a one year period. I prefer the testimony of the landlord's agent, and the tenant's application is hereby dismissed without leave to reapply.

### Conclusion

For the reasons set out above, the tenant's application is hereby 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: October 27, 2014

