



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR DRI PSF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To dispute a rent increase not served in accordance with section 42 of the Act
- c) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated October 2, 2014 and the tenant confirmed it was served by posting it on the door. The tenant /applicant gave evidence that they served the Application for Dispute Resolution on October 7, 2014 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy or is the tenant entitled to any relief?

Has the landlord proved he served the Notice of Rent Increase in accordance with section 42 of the Act?

Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The evidence is that the tenancy commenced in June 2010, it is now a month to month tenancy, and rent is \$2174.81 effective October 1, 2014. The tenant disputes the Notice of Rent Increase saying it was not served 3

months prior to the effective date of the increase. The Notice of Rent Increase is dated June 19, 2014 and the tenant said he did not get it until September 1, 2014 posted through his mail slot.

The landlord contends he served it by registered mail on June 20, 2014 and provided post office tracking information to support this, showing a notice card was left on June 20, 2014 but the tenant did not claim it by June 26, 2014 after another notice was left so it was returned to the sender, landlord. The tenant included this tracking information in his own evidence also but contended it did not prove he was served. He said the post office was not delivering to his address due to a bees' nest on the porch. He asked the landlord why he did not give him the Notice at that time if it was returned. The landlord said that the same thing had happened in 2013 when the tenant claimed the Notice was not served on him in time so he decided to rely on registered mail this time as he was also on vacation. The landlord also recorded the tracking number of the registered mail for the rent increase on the first page of the Notice to End Tenancy. The landlord also included in his evidence a note sent July 1, 2014 on the bottom of a note from the tenant informing about the bees' nest problem. He states in the note that the bees were removed by a professional on July 1, 2014 and he has checked with Canada Post and they are delivering mail. He copied the front of the registered mail envelope showing it was marked as unclaimed by the tenant. The tenant included with his evidence photocopies of receipts for \$2128 rent for each of October and November with the note, "For use and occupancy only". The landlord said the tenant still owes \$46.81 for each month (which was the amount of the rent increase). The landlord included a letter dated October 8, 2014 which he said showed he had a similar problem in 2014 over a rent increase which the tenant was refusing to pay in time.

The tenant said it was ridiculous that his tenancy would end over less than \$90 owing for rent. The landlord was not interested in settlement or reinstating the tenancy for he said the tenant was causing him too much problem over the rent. The tenant said he had had two prior hearings under file #819937 and 822688. In the first hearing, the tenant was successful in cancelling a ten day Notice to End Tenancy as the landlord had issued it on the day rent was due. In the second hearing, the tenant claimed \$5,000 deductions for various issues. The matter was settled by the tenant paying the landlord \$850 and the tenancy continuing.

In evidence is the Notice to End Tenancy, evidence of service from Canada Post, other letters concerning the bee problem, the Notice of Rent Increase, rent cheques and receipts and statements of the parties.

**Analysis:**

**Disputed Rent Increase:**

I find the tenant was served pursuant to section 89 of the Act with a rent increase on June 20, 2014. Although he denies receipt, I find the landlord served him by registered mail so the Notice was effective, whether or not the tenant chose to pick it up. I find the landlord's evidence credible and prefer it to the evidence of the tenant regarding delivery of this Notice as the landlord's evidence is supported by official post office records showing delivery was attempted and a notice was left for the tenant advising of this. Although the tenant states there was a problem with a bees' nest, I find this delivery card was left and furthermore, the landlord advised him by note on July 1, 2014 when the bees' nest was removed. I find the landlord's evidence regarding avoidance of service of rent increases is supported by the correspondence between them in 2013 about the same issue of the tenant not receiving the registered mail. I find the rent was increased to \$2174.81 effective October 1, 2014 so the tenant had an unpaid balance of rent of \$46.81 for October 2014 which he has still not paid.

**Order of Possession:**

Section 26 of the Act states that a tenant must pay rent when due, whether or not the landlord is fulfilling his obligations under the Act. Pursuant to section 46 of the Act, a landlord may issue a Notice to End Tenancy for unpaid rent. Although the tenant considered it ridiculous to receive a notice for \$46.81, I find the Act does not specify a minimum amount that must be due to make the Notice to End Tenancy effective. I find the landlord in accepting rent payments for October and November did not invalidate the Notice as he limited the acceptance to "use and occupancy only" and did not reinstate the tenancy.

Although an effort was made to settle the matter, I find the landlord was unwilling to settle as he had had two Applications concerning rent from the tenant in the past. I find the tenancy ended on October 15, 2014 in accordance with the Notice to End Tenancy. However, the parties agreed that the Order of Possession would be effective February 28, 2015 to allow the tenant time to make arrangements. As pointed out to the parties, the tenant must pay the outstanding rent and the rental amount of \$2174.81 for each month; if he does not, the landlord has the option of bringing another ten day notice to end the tenancy and obtain an Order of Possession for an earlier date. The landlord is aware that he must accept rent "for use and occupancy only" so he does not reinstate the tenancy by accepting rent payments.

**Conclusion:**

I dismiss the Application of the tenant in its entirety without recovery of the filing fee.

As requested in the hearing and pursuant to section 55 of the Act, I find the landlord entitled to an Order of Possession, effective February 28, 2015 as agreed by the parties.

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 19, 2014

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Residential Tenancy Branch

