



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI, CNL, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 28, 2014 ("2 Month Notice"), pursuant to section 49;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72; and
- other unspecified remedies.

The tenant and her agent, RJ (collectively "tenant") and the landlord's agent ("landlord") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenant confirmed that she authorized her daughter, RJ to represent her as agent at this hearing, in order to assist with English language interpretation. The landlord confirmed that she and her husband, FD, are the landlords of the tenant's rental unit. The landlord testified that she had authority to represent her husband FD, the named landlord in this application, as agent at this hearing.

The landlord testified that she personally served the tenant with the 2 Month Notice on November 28, 2014. The tenant confirmed receipt of the 2 Month Notice. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 2 Month Notice on November 28, 2014.

The tenant testified that she served the landlord with her application for dispute resolution hearing package ("Application"), by way of registered mail. The landlord confirmed receipt of the tenant's application on December 7, 2014. In accordance with

sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application, as declared by the parties.

The tenant testified that she e-mailed a digital CD file of evidence to the landlord, containing photographs, videos and audio files, approximately two weeks prior to the hearing. The tenant completed a "digital evidence details" form, stating that she had confirmed that the landlord was able to see and hear the evidence at least 7 full days before the hearing. The tenant testified that she had not confirmed this. The landlord testified that she had not received the digital file from the tenant. I had not received a complete copy of the tenant's CD, as there was only one short audio file in my copy, rather than the other files that the tenant claimed were on the CD. As the landlord was not served by one of the methods outlined in section 88 of the *Act*, and she had not received the tenant's evidence, I advised both parties that I would not be considering the tenant's digital CD evidence, as it may be prejudicial to the landlord to do so.

### Preliminary Issues

During the hearing, the tenant requested an amendment to her application. The tenant initially applied to cancel the landlord's 1 Month Notice for Cause, in error, as she was never issued one by the landlord. The tenant requested that I amend her application to substitute that she was applying to cancel the landlord's 2 Month Notice for Landlord's Use, which was the only notice issued to her by the landlord. A copy of the 2 Month Notice was included in the tenant's evidence package with her application. The landlord confirmed that she had issued the 2 Month Notice to the tenant, that she consented to the amendment, that she was ready to proceed with the hearing, that she did not require an adjournment, and that she had notice of the tenant's claims as it was clear from the tenant's application and evidence. Accordingly, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to substitute the tenant's application to cancel the 1 Month Notice, with the relief to cancel the 2 Month Notice.

During the hearing, the tenant also confirmed that she was not seeking any "other" unspecified relief, and she made this application in error. Accordingly, this portion of the tenant's application is withdrawn.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled?

Is the tenant entitled to an order regarding a disputed additional rent increase?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The landlord testified that this tenancy began on December 1, 2013 for a fixed term of one year. Monthly rent in the amount of \$775.00 is payable on the first day of each month, as per the tenancy agreement. A security deposit of \$775.00 was paid by the tenant and the landlord confirmed that she currently retains this deposit. I note that this security deposit amount is contrary to section 19 of the *Act*, which only permits a half month's rent to be collected as a security deposit. The tenant continues to reside in the rental unit.

A tenancy agreement was not provided by either party for this hearing. I requested that the landlord provide me with a copy of the tenancy agreement, after the hearing. I received this tenancy agreement from the landlord and reviewed it, prior to making this decision. The landlord agreed that the tenancy agreement is silent with respect to what happens after the fixed term expires, as both parties have not initialled the document to state that the tenancy will end after the fixed term expires.

The landlord stated that the rent is currently \$825.00 for this rental unit as of December 1, 2014, as per the landlord's Notice of Rent Increase ("NRI"), dated November 1, 2014. The landlord testified that she served the tenant personally with the NRI on November 1, 2014. The NRI indicates that as of December 1, 2014, rent would be increased by \$50.00 each month from \$775.00 to \$825.00.

The tenant disputed the landlord's rent increase. The tenant testified that she advised the landlord that the landlord was not permitted to increase her rent as per the NRI, as she had not been given 3 months' notice and the increase was above the allowable amount of the Residential Tenancy Regulation. However, the landlord confirmed that she accepted \$800.00 in rent from the tenant on January 3, 2015.

The landlord stated that she offered the tenant a discounted rate of \$775.00 at the beginning of this tenancy and other comparable 1 bedroom units in this rental building are currently renting for \$850.00. The tenant provided advertisements from a building across the street from this rental building, where 1 bedroom and den apartments rent at \$850.00 to \$875.00 per month. She stated that her unit is a small 1 bedroom unit and the landlord is attempting to raise her rent to charge as much as larger places across the street.

The landlord stated that she requires the additional increase above the allowable amount because she needs to cover the costs of her son renting another unit, her mortgage and property taxes have increased and her strata fees have remained the same. However, the landlord has not made any applications for an additional rent increase.

The landlord's 2 Month Notice, entered into written evidence by both parties, identified the following reasons for seeking an end to this tenancy on the effective date of January 31, 2015:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The landlord testified that her son wishes to occupy the tenant's rental unit. She said that her son has been attending university locally and living with the landlord until now. Her son has turned 21 and wishes to live on his own and become more independent.

The landlord stated that she does not know whether there are other units available in this rental building, for her son to occupy. She indicated that she has not researched other available locations. The landlord confirmed that she owns and operates three properties but her other properties are more expensive for rental and she did not want her son to pay more to rent these other units.

The landlord testified that the tenant can remain in the rental unit if she pays a minimum of \$825.00 in rent per month. The landlord stated that she is losing money because the tenant is paying a reduced monthly rent of \$775.00 at the rental unit, as compared to the other units in the building which are \$850.00 per month. She indicated that this was the main reason she issued the 2 Month Notice. The landlord stated that if her son has to pay \$850.00 to rent another unit in the rental building, which she said that he can do, then the tenant will have to pay \$825.00 initially for six months and then \$850.00 for a further six months, to stay in her rental unit.

The landlord also indicated that she expected the tenant to vacate the rental unit at the end of the fixed term period on December 1, 2014. The tenant provided printouts of text messages from the landlord, with her application. One of the text messages from the tenant to the landlord indicates that the landlord cannot increase the rent above 2.2%. In response, the landlord indicates that she will not be renewing the tenant's lease because she had received another complaint from the strata.

The tenant disputed the landlord's 2 Month Notice, stating that she is being evicted for other reasons that are unrelated to the landlord's son requiring the rental unit. The tenant indicated that the landlord issued the 2 Month Notice after the tenant disputed the landlord's NRI. The tenant also said that she received a letter from the strata owner of the rental building, dated November 17, 2014, that she was placing items on her balcony that were not permitted. She stated that this is one of the reasons that the landlord intends to evict her.

The landlord indicated that the tenant has received previous strata violation notices for piling items on her balcony, placing a doormat in the hallway, smoking on the balcony, and leaving items in the parking lot. However, the landlord testified that the tenant was not issued the 2 Month Notice for these reasons.

The tenant provided a letter, dated November 28, 2014, from the landlord to the tenant. The letter was written and signed by the landlord and it was also signed by her husband co-landlord. The landlord confirmed that she issued this letter to the tenant. The letter states that the parties discussed a rent increase in November 2014. The letter also discusses that the tenant advised the landlord that she would be moving out because her daughter was buying a house and then the tenant changed her mind and requested to continue renting the rental unit for another 6 months. However, the landlord did not provide a written letter from the tenant, regarding her intention to vacate; she only referenced a verbal conversation. The letter states that \$775.00 was a discounted rental amount and that the lease could be renewed for another 6 months at \$825.00 and then \$850.00 for another 6 months after that. It indicates that the landlord's son can rent another unit in the same complex for \$850.00 per month. The letter acknowledges that the landlord did not give 3 months' notice of the rent increase and the landlord is aware that she is not permitted to increase the rent more than the legal amount of 2.5%.

### Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, notices, e-mails and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

### Rent Increase

The landlord stated that she is aware that she did not give 3 months' notice of the rent increase to the tenant, in accordance with section 42 of the *Act*. The landlord also stated that she is aware that she asked for an additional amount above the legal

percentage limit allowed each year under the Residential Tenancy Regulation. The landlord confirmed that she would be making a future application for a legal rent increase.

The landlord did not provide 3 months' notice of the rent increase in accordance with section 42 of the *Act*. The landlord served the tenant with the NRI on November 1, 2014, for a rent increase to take effect on December 1, 2014. The landlord also attempted to increase the rent by \$50.00 each month, which is beyond the allowable amount of 2.2% in 2014 and 2.5% in 2015, as per the Residential Tenancy Regulation. The landlord did not apply for a rent increase above the allowable amount under sections 22 and 23 of the Residential Tenancy Regulation.

Accordingly, the landlord's Notice of Rent Increase, dated November 1, 2014, is cancelled and of no force and effect. I find that the legal monthly rent for the tenant's rental unit has remained \$775.00 throughout the course of this tenancy and will remain at this level, until it is legally changed in accordance with the *Act*. I find that the tenant has overpaid rent for January 2015, in the amount of \$25.00. I find that the tenant is entitled to a refund of this \$25.00 amount, from the landlord.

### 2 Month Notice

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord states that her son intends to occupy the tenant's rental unit.

According to subsection 49(8) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on November 28, 2014, and filed her Application on December 1, 2014. Therefore, she is within the 15 day time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 2 Month Notice.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch*

*may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

The landlord has stated a number of different reasons for issuing the 2 Month Notice. The landlord stated that her son requires the rental unit, as he wishes to live on his own at this time. However, the landlord also stated that the tenant can remain in her rental unit if she pays a higher monthly rental amount. The landlord stated that her son can only occupy another unit in the rental building if the tenant pays a higher rent to remain in the rental unit. Otherwise, the landlord's son requires the tenant's rental unit.

The landlord also testified that she was operating a business and required additional rent from the tenant, so that the rental amount would be comparable to other similar units in the building. Based on the evidence before me, I find that this was the landlord's main reason for issuing the 2 Month Notice.

The tenant stated that when she disputed the landlord's rent increase, the landlord indicated that the tenancy would end as per the fixed term agreement. The landlord testified that she was expecting the tenant to vacate the rental unit because the tenant's daughter bought a house and the tenant gave the landlord notice to vacate on an earlier date. However, as mentioned above, the landlord did not provide a written notice to vacate, signed by the tenant, for this hearing. The landlord indicated that she issued the 2 Month Notice to ensure that the tenant would leave the rental unit.

The tenant stated that she received the landlord's notice of rent increase on November 1, 2014. The landlord then served the tenant with a letter, dated November 17, 2014, from the strata unit, regarding violations by the tenant placing items on her balcony. The landlord indicated a number of strata violations have been committed by the tenant. The landlord then issued a letter to the tenant on November 28, 2014, regarding a rent increase, the tenant's intention to move out as earlier agreed, the tenant's requirement to pay additional rent if she wished to stay, and the landlord's son's intention to move in to the rental unit. November 28, 2014 was also the same time that the tenant was served with the landlord's 2 Month Notice.

I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not done in good faith.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the onus of proof to show that the landlord's son intends to occupy the tenant's rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated November 28, 2014, is hereby cancelled and of no force and effect. I decline to issue an order of possession to the landlord on this basis.

As the tenant was successful in her application, she is entitled to recover the filing fee of \$50.00 from the landlord.

In accordance with section 44(3) of the *Act*, a tenancy is deemed to be renewed on a month to month basis under the original terms of the tenancy agreement, if the agreement does not specify that the tenant must move out at the end of the fixed term period and the landlord and tenant have not entered into a new tenancy agreement. Accordingly, as the tenancy agreement is silent on this issue, I order that this tenancy continue as a periodic tenancy (i.e., a month to month tenancy) under the terms of the original tenancy agreement, dated November 30, 2013, until it is ended in accordance with the *Act*.

I also find that there is undisputed sworn testimony and written evidence that the landlord required the tenant's payment of a security deposit, equivalent to a full month's rent at the beginning of this tenancy. As the landlord's collection of \$775.00 for the security deposit contravenes section 19 of the *Act*, I find that the tenant is entitled to a return of the \$387.50 illegally charged to the tenant by the landlord for this security deposit. No interest is payable over this period for the overpaid security deposit.

### Conclusion

The landlord's 2 Month Notice, dated November 28, 2014, is cancelled and of no force and effect. I order this this tenancy continue as a month to month tenancy under the terms of the original tenancy agreement, dated November 30, 2013, until it is ended in accordance with the *Act*.



The landlord's Notice of Rent Increase, dated November 1, 2014, is cancelled and of no force or effect. I order that the monthly rent for the tenant's rental unit remains set at \$775.00, the same monthly rent as has been legally in effect throughout this tenancy, until it is legally changed in accordance with the *Act*.

I find that the tenant is entitled to a monetary award of \$462.50, comprised of a return of an illegally charged portion of the tenant's security deposit (\$387.50), an illegally charged rent increase of \$25.00, and the \$50.00 recovery of the filing fee for her application. To implement this order and as this tenancy is continuing, I order the tenant to reduce the amount of a future monthly rent payment by \$462.50. As noted above, the monthly rent then reverts to the legal amount established in the Residential Tenancy Agreement, currently \$775.00, on the month after the tenant's one-time reduction of her monthly rent.

The tenant's application for other unspecified relief, is withdrawn.

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: January 16, 2015

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Residential Tenancy Branch

