



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNSD, MNDC, FF

### Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent served February 20 2015 and for a monetary award for unpaid rent.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenancy has ended as a result of the ten day Notice? Is the landlord entitled to January and February 2015 as claimed?

### Background and Evidence

The rental unit is a manufactured home with an addition constructed to it. The tenancy started in April 2009. The current monthly rent is \$878.00. The landlord holds a \$350.00 security deposit.

It is not disputed but that the tenant has not paid the January or February 2015 rent. Her post dated rent cheques were both dishonoured by her financial institution. She testified that her funds were misappropriated through an internet fraud by others.

She received the ten day Notice to End Tenancy but did not read the provision requiring her to pay the amount demanded or challenge the Notice within five days of service.

She claims that a contract she and the landlord signed in November 2009 changing the rent from \$700.00 to \$878.00 was an illegal rent increase.

The landlord says that back in 2009 the tenant gave her notice to end the tenancy and that a new agreement was struck in order to allow her to continue to occupy the

premises but at a higher rent due to the necessity of the landlord providing cleaning and garbage removal.

### Analysis

Section 46 of the *Residential Tenancy Act* (the “Act”) deals with payment of rent and the consequences for non-payment. It provides:

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may  
(a) pay the overdue rent, in which case the notice has no effect, or  
(b) dispute the notice by making an application for dispute resolution.

**(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant**

**(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

**(b) must vacate the rental unit to which the notice relates by that date.**

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and  
(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

*(emphasis added)*

By use of the phrase “conclusively presumed to have accepted that the tenancy ends...” the law leave little if any room for argument that a failure to read the Notice is a defence to its effects. The fact that the tenant might not have realized her rights would be severely curtailed if she failed to act within the five day period, is not a defence.

I have considered the renewal agreement the parties signed November 19, 2013, raising the rent to \$878.00 and find that it was not an unlawful rent increase.

Sections 41 and 42 of the *Act* deal with rent increases. They provide:

**Rent increases**

**41** A landlord must not increase rent except in accordance with this Part.

**Timing and notice of rent increases**

**42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

It is implicit in s.41 and explicit in s.42 that the rent increase be “imposed;” that is, it must be a rent increase that is at sole behest of the landlord. That is not the case here. The November 2013 contract indicates that the increase was an agreed increase, not an imposed one. In any event, the evidence satisfies me that, at the time, the tenancy was coming to an end as a result of the tenant’s notice. The contract has the indicia of a new tenancy agreement and a landlord and tenant may negotiate rent afresh at the start of a tenancy.

For these reasons I find that the landlord has not imposed a rent increase contrary to the *Act*.

In result, I find that this tenancy ended by operation of s.46, above, on February 21, 2015 and the landlord is entitled to an order of possession.

I grant the landlord a monetary award of \$1756.00 for unpaid January and February 2015 rent, plus the \$50.00 filing fee for this application. I authorize the landlord to retain the \$350.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$1456.00.

Conclusion

The landlord's application is allowed. He will have an order of possession and a monetary award against the tenant in the amount of \$1456.00.

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: March 26, 2015

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Residential Tenancy Branch

