



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, RP, ERP, DRI, OLC, RR, MNDC

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice"), an order requiring the landlord to make repairs and emergency repairs to the rental unit, to dispute an additional rent increase, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, for an order allowing a reduction in rent, and a monetary order for money owed or compensation for damage or loss.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-I have determined that the portion of the tenant's application dealing with any claim other than the request seeking cancellation of the Notice is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's application and dismissed that portion of the tenant's application, **with leave to reapply**.

The hearing proceeded only upon the tenant's application seeking cancellation of the Notice.

### *Procedural matter-*

At the outset of the hearing, the matter of each party's evidence was discussed. The landlord did not raise an objection as to the submission and receipt of the tenant's evidence; however, the landlord submitted approximately 38 pages of evidence just 6 days prior to the hearing and the tenant's advocate submitted that they received only 22 pages of evidence.

In considering Rule 3.15, the respondent, the landlord in this case, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than 7 days prior to the hearing, and in this case, the landlord did not. In considering whether to accept the landlord's evidence, I find that the landlord delayed in sending his evidence and he provided no proof that he served the tenant the entire package of his evidence; however, I

have accepted the portion of the landlord's evidence which was relevant to the findings in this Decision, which is the two written tenancy agreements and the receipts for rent payments. It is noted that the tenant also supplied copies of this evidence. I have excluded the portion of the landlord's evidence not relevant for consideration in this matter.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

### Background and Evidence

At the beginning of the hearing for consideration of the tenant's application, the tenant stated that this tenancy originally began in January or February 2010 and the landlord stated the tenancy originally began on May 15 or 25, 2010. The tenant stated that his current monthly rent is \$1190.00, due on the first day of the month, and the landlord agreed.

The landlord gave evidence that on June 3, 2015, the tenant was served with the Notice, by leaving it personally with the tenant, listing unpaid rent of \$1390.00 as of June 1, 2015. The effective vacancy date listed on the Notice was June 3, 2015.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date, June 3, 2015 is changed to June 13, 2015.

The Notice informed the tenant that he had 5 days of receipt of the Notice to file an application for dispute resolution with the RTB to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice. In this case, the tenant's application was made on June 5, 2015, within the required time frame.

The landlord submitted that he did not receive all the rent owed for June 2015, within 5 days of the Notice being issued. The landlord also contended that the tenant has been deficient in some of his rent payments this year, or \$200.00.

In explanation, the landlord's position was that the tenant's monthly rent is \$1390.00, as reflected on the written tenancy agreement he submitted into evidence. The first written tenancy agreement, which was signed by the parties, shows a tenancy start date of May 25, 2010, and a monthly rent of \$1200.00. The second written tenancy agreement was a 1 page document, the terms for which were all typewritten, with the exception of the amount of monthly rent, which shows a handwritten, unclear notation of \$1390 as monthly rent. I also note that, from the copy sent to me, the portion of the document showing the monthly rent appeared to have been smudged. This written tenancy agreement was signed by the parties on January 1, 2012.

The landlord confirmed that he received \$290.00 on June 2, 2015, which was prior to the Notice being issued. The landlord submitted a copy of the receipt for this payment.

The landlord also confirmed that he did receive \$900.00 on June 15, 2015, but that no receipt was issued. The landlord submitted further that the tenant did not pay the amount of \$1390.00

at the beginning of the new tenancy agreement, or January 1, 2012, but did begin to pay the correct amount of \$1390.00 in July 2014, although not every month since then.

*Tenant's response-*

The tenant submitted that his monthly rent obligation for the entire home is \$1190.00, as it has been since 2010, even though the original tenancy agreement shows monthly rent of \$1200.00. The tenant submitted in explanation that the landlord asked him to build an additional suite to the home, and that the parties agreed to an extra \$200.00 in monthly rent at such time as the suite was complete; however, the suite is not complete at this time, according to the tenant. The tenant explained that of the \$1190.00 obligation, he pays the landlord \$290.00, and his brother, who also lives in the home, pays \$900.00 per month, which goes directly to the landlord from the income assistance program. The tenant submitted that the payment of \$900.00 for June's rent was sent out on the usual day, or the 27<sup>th</sup> day of the month preceding the rental period, or in this case, May 27, 2015 and therefore the landlord received the full rent for June by June 2, 2015.

I note that all the receipts submitted by both parties show the tenant as the payor of the monthly rent, as the tenant's brother is not listed as a tenant.

The tenant further submitted that although he did not agree that monthly rent was \$1390.00, he felt threatened by the landlord and had been paying the increased rent for the last 8 months, under duress; the tenant, however, stopped the increase of \$200.00 when he learned of his rights under the Act, according to the tenant. The tenant explained that the landlord illegally increased the monthly rent by \$200.00, the dispute of which formed a part of his original claim.

Analysis

Under section 46 of the Act, a landlord may serve a tenant a 10 Day Notice to End Tenancy for Unpaid Rent if rent is unpaid on any day after the day it is due. This section goes on to say that if the tenant pays the overdue rent, the Notice has no effect.

In the case before me, I find the landlord submitted insufficient evidence to show that the tenant owes monthly rent of \$1390.00. After considering and reviewing the written tenancy agreement signed by the parties on January 1, 2012, I find the document shows that the amount of monthly rent was altered, to increase the rent by \$200.00. When considering the entire document, the only portion of the document containing the terms of the agreement not typewritten was the amount of monthly rent, which appears to have the original amount, or \$1190.00, altered. Additionally, there were no initials of the parties by the altered portion, which further led me to conclude that the landlord unilaterally altered the document to increase the rent without the knowledge or consent of the tenant.

In addition to the above, I also found the landlord's evidence lacked credibility as at first in the hearing, he stated that he agreed that monthly rent was \$1190.00, then later in support of his Notice submitted that it was \$1390.00. I also found that I could not rely upon the dates the landlord contended he received the monthly rent for June 2015, as his own evidence shows a payment of \$290.00 on June 2, 2015, prior to the Notice being issued, with no corresponding deduction for that payment on the Notice. Likewise, the landlord failed to submit a receipt showing a payment of \$900.00, which he claimed was made on June 15, 2015, and the

documentary evidence shows that the landlord issued a receipt for every payment of rent for 2015 through June 2015.

Further leading me to doubt that the monthly rent obligation was \$1390.00, the landlord confirmed that although the written tenancy agreement was signed on January 1, 2012, the tenant did not start paying \$1390.00 until July 2014, which led me to believe the tenant's version of events, that he felt forced to pay an increase at that time.

I find that the landlord submitted insufficient evidence to support that on the date the Notice was issued on June 3, 2015 that the tenant owed rent on that date. I therefore order that the Notice of June 3, 2015, be cancelled, with the effect that the tenancy continues until it may otherwise end under the Act.

Due to the above noted circumstances, I find it necessary to make a finding as to the monthly rent obligation of the tenant, pursuant to section 62(2). After a review of the evidence as noted above, and as I have concluded that the landlord unilaterally altered the latest tenancy agreement, I find, upon a balance of probabilities that the monthly rent obligation of the tenant continues to be \$1190.00, as it has been since the start of the tenancy. I direct the monthly rent obligation of the tenant to be restored to \$1190.00. The landlord is advised that he may only increase the monthly rent in accordance with the Act.

#### Conclusion

The tenant's application seeking cancellation of the landlord's 10 Day Notice of June 3, 2015, is granted as I have ordered the Notice be cancelled.

The portion of the tenant's application dealing with the balance of his claim is dismissed, with 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: July 13, 2015

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Residential Tenancy Branch

