



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR, MNSD, OLC, RR  
OPR

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for unpaid rent or utilities / a monetary order as compensation reflecting the return of all or part of the security deposit / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and permission to reduce rent for repairs, services and facilities agreed upon but not provided. Both parties attended and gave affirmed testimony.

During the hearing the landlord requested an order of possession in the event the tenant's application for cancellation of a notice to end tenancy for unpaid rent or utilities does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

In response to a separate application by the tenant, another hearing is scheduled to occur on September 30, 2015. Principal differences between the present hearing and the next hearing appear to include, but may not be limited to, an application by the tenant in the next hearing for cancellation of a notice to end tenancy for cause, and an application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement.

Pursuant to a written tenancy agreement which is in evidence before me, the 3 month fixed term of tenancy was from September 01 to November 30, 2011. Thereafter, tenancy has continued on a month-to-month basis. Pursuant to the tenancy agreement, monthly rent of \$535.00 is due and payable in advance on the first day of each month. A security deposit of \$267.50 was collected. Further, the written tenancy agreement does not indicate that cable is included in the rent.

The landlord testified that rent was increased by \$5.00 to \$540.00 effective from March 01, 2015. The landlord also testified that notice of this increase was given verbally to the tenant sometime in November 2014. For his part, the tenant testified that he understood the \$5.00 increase to be his share of cable which was being provided to him as well as to other renters in the building. It appears that sometime after the start of tenancy, the landlord may have undertaken to find a way to make cable available to all the tenants in the building at an agreeable monthly rate.

The landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated June 30, 2015. A copy of the notice was submitted in evidence. The notice documents that \$55.00 was unpaid for "Mar – June 2015." The landlord testified that this amount reflects unpaid cable. The tenant filed an application to dispute this notice on July 02, 2015.

The landlord issued a second 10 day notice to end tenancy for unpaid rent or utilities dated July 18, 2015. A copy of the notice was submitted in evidence. The notice documents that \$20.00 was unpaid when due on July 01, 2015. The notice also appears to document that the amount of \$20.00 reflects unpaid rent and cable, however, during the hearing the landlord testified that the amount of \$20.00 reflects the tenant's failure to pay the additional rent of \$5.00 over a 4 month period.

The parties both agree that rent of \$535.00 is presently paid in full to the end of September 2015, and that it is consistently paid on time by way of payment from the Ministry.

### Analysis

I find that the documentary evidence submitted is incomplete. I also find that the documentary evidence that has been submitted is virtually unfathomable where it concerns the relationship between rent and cable.

Section 42 of the Act addresses **Timing and notice of rent increase**, and provides in part:

42(3) A notice of a rent increase must be in the approved form.

Section 43 of the Act addresses **Amount of rent increase**, and provides in part:

43(1) A landlord may impose a rent increase only up to the amount

(c) agreed to by the tenant in writing.

In the absence of evidence of a notice of rent increase in the “approved form,” and / or evidence that the tenant has agreed to a rent increase “in writing,” I find that the monthly rent in this tenancy is \$535.00 per month, and not \$540.00.

Based on the documentary evidence and testimony of the parties, I find there is insufficient evidence that the tenant has failed to pay the full amount of \$535.00 in rent which is due and payable in advance on the first day of each month, at any time since tenancy began. I also find there is insufficient evidence of any written or otherwise clear agreement between the parties as to what specific payment is due each month for cable. Accordingly, the 10 day notice dated June 30, and the 10 day notice dated July 18, 2015 are both hereby set aside, with the result that the tenancy presently continues uninterrupted. Following from all of the foregoing, the landlord’s oral request for an order of possession is dismissed.

As to orders requested by the tenant to be issued against the landlord, the attention of the parties is drawn not only to the sections of the Act set out above, but also to other sections which appear to be relevant to the circumstances of this dispute, as follows:

Section 14: **Changes to tenancy agreement**

Section 38: **Return of security deposit and pet damage deposit**

The tenant’s application for a monetary order reflecting the return of his security deposit is dismissed with leave to reapply, and the parties are informed that the disposition of a security deposit is typically determined at such time as a tenancy ends.

In the absence of sufficient evidence to support the claim, the tenant’s application for a reduction in rent of \$80.00 for repairs, services or facilities agreed upon but not provided, is hereby dismissed.

Going forward, the landlord is encouraged to give proper notice of a rent increase. Additionally, the parties are encouraged to enter into a clearly worded written agreement, or to negotiate a mutually agreeable amendment to the written tenancy agreement concerning the provision of cable, thereby resolving that aspect of the dispute between them.

Conclusion

The 2 separate 10 day notices to end tenancy are hereby set aside, and the tenancy presently continues in full force and effect.

The landlord's oral request for an order of possession is hereby dismissed.

The tenant's application for a reduction in rent for repairs, services or facilities agreed upon but not provided is hereby dismissed.

The tenant's application for a monetary order reflecting the return of all or part of his security deposit is hereby 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: September 01, 2015

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Residential Tenancy Branch

