



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, CNR

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant acknowledged he received one of the evidentiary packages from the landlord. He testified he did not receive the second package. The landlord testified it was posted to the door. After reviewing the evidence contained in the second package I determined it was not necessary to adjourn the hearing even though the tenant did not have copies of the documents as the problem could be remedied by orally advising the tenant of what the package contained. In particular, the major dispute in this case was the amount of the rent for the period January 1, 2013 to May 1, 2013. The package did not contain receipts relevant to those dates despite the fact the tenant had demanded the landlord produce all receipts. I determined that it was appropriate to proceed with the hearing.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on August 4, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the tenant was personally served on the landlord on August 18, 2015. I find the landlord's Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenant by mailing, by registered mail to where the tenant resides.

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order cancelling an additional rent increase?
- b. An order to cancel the 10 day Notice to End Tenancy dated August 6, 2015?

- c. A monetary order in the sum of \$2800 to recover a rent increase not permitted by the Act?
- d. An order that the landlord provide services or facilities required by law
- e. An order that the landlord comply with the Act, regulation and/or the tenancy agreement?

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent?
- b. A monetary order in the sum of \$2785 for unpaid rent and damage to a pool table?
- c. An order to recover the cost of the filing fee?

#### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated August 6, 2015?
- b. Whether the tenant is entitled to an order cancelling an additional rent increase?
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the tenant is entitled to an order the landlord provide services or facilities required by law?
- e. Whether the tenant is entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement?
- f. Whether the landlord is entitled to an Order for Possession?
- g. Whether the landlord is entitled to A Monetary Order for loss of rent and/or damage to a pool table and if so how much?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

#### Background and Evidence

The tenant rented another unit in the rental property on January 1, 2011. He testified the rent for that unit was \$700 per month payable in advance. He paid a security deposit of \$350 at the start of the tenancy.

The tenant testified he moved to the rental unit which is the subject of these proceedings on January 1, 2013. He paid rent of \$700 per month for the months of January, February, March and April. The parties did not have a written tenancy agreement. The representative of the landlord disputes this although he has no personal knowledge as he was not employed by the landlord at that time..

The landlord testified there is a written tenancy agreement that provided the tenancy would start on May 1, 2013 and set the rent for \$800 per month. The landlord failed to include this as part of the documents presented. The tenant testified he was never given a copy of that agreement but he acknowledged he signed a written tenancy agreement some time after May 1, 2013 that set the rent for \$800 per month.

The tenant has paid rent of \$800 a month from May 1, 2013 to and including August 1, 2015.

The tenant failed to pay the rent when due on August 1, 2015. The landlord served a 10 day Notice to End Tenancy by posting on August 4, 2015. The tenant failed to pay the rent within the 5 days that would void the Notice. The rent was paid a few days later and it was accepted by the landlord "for use and occupation only." The tenant has paid the rent for September and October. The rent was accepted by the landlord for "use and occupation only."

#### Analysis – Tenant's Application

The landlord submitted the tenant's application should be dismissed because it was filed on August 12, 2015 but was not paid within the 3 days provided by the Act. It was served on August 18, 2015. I do not accept this submission. The tenant contacted the landlord and advised the landlord he had documents to serve him. The representative of the landlord stated he and the landlord were not available at the time and the parties agreed the tenant could see the landlord the following week. The tenant relied on the representation. I determined the landlord is estopped from relying on the representation as the tenant delayed in serving the Application for Dispute Resolution because of the request of the landlord. Further, I determined this is a situation where the tenant is entitled to an order extending the time for service as the landlord has not been prejudiced by any delay in service.

Section 40 to 43 of the Residential Tenancy Act provides as follows

#### **Meaning of "rent increase"**

**40** In this Part, "rent increase" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

#### **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.

**Amount of rent increase**

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

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

After hearing the disputed evidence of the parties I determined original rent for the period January 1, 2013 to April 30, 2013 was \$700 per month for the following reasons:

- I accept the oral testimony of the tenant to this effect. His evidence was precise and he gave ample opportunity to obtain evidence to dispute his testimony.
- The representative who appeared on behalf of the landlord did not first hand evidence as he was hired commencing September 1, 2015 several months after this period.
- The tenant specifically asked the landlord to produce receipts for the entire period. The landlord failed to produce receipts or other evidence prior to September 1, 2013.

I further determined the rent was increased contrary to the Act and the tenant is entitled to recover the additional rent collected by the landlord contrary to the Act. Section 43(5) provides that the tenant is entitled to deduct the increase from rent or otherwise recover the increase. Thus I determined the tenant has over-paid the rent by \$2800 for the period from May 1, 2013 and ending August 31, 2015. In addition the tenant has overpaid the rent by \$120 for September 2015 and \$120 October 2015 for a total of \$240. I determined the tenant is entitled to recover \$3040.

I determined the rent continues to be \$700 per month. While the landlord used the correct form in serving the Notice of Rent Increase dated April 27, 2015 the landlord failed to use the correct current rent and the amount of the increase is not valid. Further, it would not be fair to force the landlord to rely on the Notice of Increase where both parties were under the misunderstanding the current rent was \$800 per month as it would not be fair to limit the landlord has a right to apply for an additional rent increase under the Act. I determined the Notice of Rent Increase dated April 27, 2015 is of no force and effect.

**I ordered that the Notice to End Tenancy dated August 4, 2015 be cancelled.** At the time the Notice was served the tenant had the right to apply the illegally collected rent to any outstanding rent and thus no rent was owed. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

**I ordered the landlord pay to the tenant the sum of \$3040.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

I dismissed the tenant's claim that the tenant is entitled to an order the landlord provide services or facilities required by law as the tenant failed to present sufficient proof to establish this claim.

Analysis – Landlord's Application - Order of Possession:

I dismissed the landlord's application for an Order for Possession as the 10 day Notice on which it was based has been cancelled.

I dismissed the landlord's claim for a monetary order and an order to retain the security deposit. The rent for August, September and October 2015 has been paid. The landlord claimed the sum of \$325 for the cost of repairing felt on a pool table damaged by the tenant. The repair work has not been completed. The landlord failed to present a quotation or other evidence of the cost of repair. The pool table was obtained second hand by the landlord. The landlord testified they have owned it for over a year. The tenant testified it was taken from a Heritage building and is approximately 30 years old. The landlord failed to prove the damage was caused by the tenant's intentional or negligent act rather than reasonable wear and tear. I determined the landlord failed to prove the quantum of loss and as a result this claim is dismissed. I dismissed the landlord's claim for the cost of the filing fee as the landlord has not been successful with its application.

Conclusion

I ordered that the landlord pay to the tenant the sum of \$3040 for a rent increase that was obtained by the landlord contrary to the Act. I determined the present rent is \$700 per month payable in advance on the first day of each month. I ordered that the 10 day Notice to End Tenancy be cancelled as there was no rent owing at the time the Notice to End Tenancy was given. I dismissed the tenant's application for an order that the landlord provide services or facilities required by law. I ordered the landlord's application be dismissed.

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: October 21, 2015

