



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: DRI RR FF

### **Introduction**

Both parties attended the hearing although the tenant/applicant was 25 minutes late in attendance. The landlord said he personally received the Application for Dispute Resolution. This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To find her 2015 rent increase did not comply with the Act and to obtain an Order for a rebate of rent to recover the illegal increase in rent pursuant to section 43(5).
- b) To dispute that she was required to vacate the property on February 29, 2016 pursuant to her Notice to End Tenancy.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that there was an increase in her rent that did not comply with the Act and that she is entitled to a rebate for the excess paid and to recover the filing fee? Has she proved that her tenancy did not end on February 29, 2016?

### **Background and Evidence**

Both parties attended the hearing. The tenant was 25 minutes late in joining the conference and the landlord provided his evidence first. Both were given opportunity to be heard, to present evidence and make submissions. The landlord said that the rent was not illegally increased. The tenant offered \$100 extra monthly for the use of a tent and shed. He moved his vehicle out of the tent and she received the use of the areas as requested. When she attended, the tenant did not deny this testimony of the landlord.

The tenant also alleged the landlord sold the unit without telling her and was now requiring her to be out at the end of February. The landlord provided in evidence a written agreement signed by him and the tenants dated February 1, 2016. The agreement states the tenant sent a text on January 31, 2016 stating she was giving notice to move on or before the end of February 2016 and the landlord accepts the

notice. It states the new owner will take possession on March 2016. It also sets out the agreements concerning the appliances and the inspection of the home on January 31, 2016. The landlord said the tenant now wants to withdraw the notice but he does not accept that.

The tenant said first that she never read the agreement she signed, she was under the impression that she could stay until March 31, 2016. She said she had sent a text message but it was not actual notice to end her tenancy. The landlord pointed out that the tenant and her boyfriend both signed the agreement and wrote in the date. He noted that their writing shows no duress. He said they were very happy with the arrangement at the time. He requests an Order of Possession pursuant to the tenant's notice to end her tenancy and the fact she has not paid rent for March 2016. He said he served a 10 Day Notice to End the tenancy on March 21, 2016 to be effective March 31, 2016 as she had not paid rent and also owes over \$500 for hydro. He said hydro is threatening to cut off the power.

In evidence is the signed agreement, a Notice of Entry dated January 30, 2016 and a receipt for a partial payment for hydro. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

Pursuant to Residential Policy Guideline 11-1, a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. The other party must give consent. In this case, the landlord does not consent to the tenant withdrawing her Notice to End Tenancy.

Although the tenant contended the Notice was not in the proper form, I find it contained the necessary elements set out in section 52 of the Act such as the names of the parties, the address of the unit, the effective date and the signatures (with witnesses). When given by a tenant, a notice does not have to be on an approved form according to section 52. I also find there was a mutual agreement signed by both parties and dated February 1, 2016 to end the tenancy on or before the end of February 2016.

I do not find the tenant's evidence credible that she was under duress and did not read the signed agreement concerning the notice. I find the landlord's evidence credible that the tenant is an astute person who was happy about her plans at the time and signed and dated the agreement freely with her boyfriend. Under section 55(2) (d), the landlord may receive an Order of Possession when the landlord and tenant have agreed in writing to end the tenancy.

I find insufficient evidence to support the tenant's allegation of an illegal rent increase. I find the landlord's evidence credible that the tenant wanted additional storage and a tent and offered an extra \$100 a month in rent.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply. No filing fee was paid. Pursuant to my authority under section 55(2(a) and (d), I find the landlord entitled to an Order of Possession effective two days from service.

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 24, 2016

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Residential Tenancy Branch