



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      DRI, CNR, ERP, RP, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 6, 2016 ("10 Day Notice") pursuant to section 46;
- an order requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 44 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing package ("Application") on June 8, 2016, by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's Application on June 13, 2016, five days after its registered mailing.

The tenant confirmed that he sent a CD and one-page letter to the landlord by way of regular mail on July 5, 2016. I notified the tenant that the mail was deemed received by the landlord the day before this hearing on July 10, 2016, five days after the mailing, as per section 90 of the *Act*. I advised the tenant that I could not consider his CD and one-page letter at this hearing because it was late, as per Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, since it would have been deemed received by the landlord less than 14 days before this hearing.

The tenant confirmed receipt of the landlord's 10 Day Notice on June 6, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

### Issues to be Decided

Is the tenant entitled to an order regarding a disputed rent increase?

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to make emergency and regular repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This month-to-month tenancy began on February 1, 2006 with the former landlord. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by the tenant and the former landlord. The tenant said that the new landlord, who is named in this Application, assumed this tenancy in November 2013.

The tenant provided a copy of the written tenancy agreement which indicates that rent of \$625.00 is due on the first day of each month. The tenant also provided a Notice of Rent Increase, dated November 28, 2008 ("NRI"), which he said was issued by the former landlord to raise his rent by \$23.00 to a total of \$648.00 per month, effective on March 1, 2009. The tenant said that is the only time his rent was legally increased, as he has not received any other notices of rent increase from the former or current landlords.

The tenant said that the landlord verbally demanded that the tenant pay \$800.00 per month for rent beginning on June 1, 2016. The tenant said that the landlord did not issue a notice of rent increase to him regarding this increase. The tenant disputes the landlord's attempted rent increase to \$800.00 per month. The tenant said that he agreed to pay up to 2.9% as per the 2016 allowable *Regulation* amount. The tenant said that he agreed to pay \$670.00 and then \$700.00 after having discussions with the landlord. The tenant said that he cannot afford to pay \$800.00 per month for rent but can pay up to the allowable amount of 2.9%. The tenant testified that he paid rent of \$700.00 for each of June and July 2016 to the landlord and the landlord accepted his rent. The tenant said that he was issued a 10 Day Notice for unpaid rent of \$800.00 due on June 1, 2016.

### Analysis

Rent Increase and 10 Day Notice

The tenant provided undisputed testimony at this hearing. I find that the landlord did not issue a legal notice of rent increase in the approved form, as required by section 42(3) of the *Act*. Accordingly, the landlord's attempted rent increase to \$800.00 per month is illegal. I find that the tenant only agreed to pay \$700.00 per month because he was worried about his tenancy and the landlord issued a 10 Day Notice to evict him. I find that the rent was legally \$648.00 per month, as the tenant agreed that a legal notice of rent increase was issued by the former landlord with the proper three month notice period and it was within the allowable *Regulation* amount.

Therefore, I find that the 10 Day Notice that was issued to the tenant, indicating \$800.00 was due on June 1, 2016, indicated an incorrect rent amount. I find that the tenant properly disputed the notice within the 5 day time period under section 46(4) of the *Act*, as he filed his application on June 7, 2016, after receiving the notice on June 6, 2016. The landlord did not appear at this hearing to provide submissions about the notice and failed to meet his burden of proof. Accordingly, the landlord's 10 Day Notice, dated June 6, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenant overpaid rent from June to July 2016 in the amount of \$52.00 per month, totalling \$104.00. Therefore, I find that the tenant is entitled to a monetary award of \$104.00 to recover this rent overpayment.

I allow the tenant's application to dispute the landlord's rent increase. I order that the monthly rent for the tenant's rental unit remains at \$648.00 for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

Repairs

The tenant seeks orders for the landlord to perform the following repairs:

- 1) emergency lights need to be replaced in the hallway outside the tenant's rental unit on the second floor of the rental building;
- 2) the fire extinguisher in the hallway outside the tenant's rental unit on the second floor of the rental building has to be inspected and updated because the last inspection was completed in 2015;
- 3) the rental unit bathroom ceiling lightbulb and globe are missing and the hole is rusted and needs to be fixed;
- 4) the rental unit bathroom toilet seat is scraped and the film is yellow and needs to be replaced as it has not been replaced during this entire tenancy;
- 5) the rental unit living room blinds are broken and need to be replaced as they have not been replaced during this entire tenancy; and

6) the entire rental unit needs to be painted in white in order to make it brighter.

I order the landlord to perform all of the above repairs, with the exception of #5 painting the entire rental unit, as that is only a cosmetic renovation not a required repair. I order the landlord to perform repairs for #1 to #3 by July 22, 2016. I order the landlord to perform the remaining repairs for #4 to #5 by August 5, 2016.

If the above repairs are not completed by the above deadlines or the parties disagree as to whether the repairs have been sufficiently completed, both parties have leave to reapply at the RTB for compensation or determination.

As the tenant was mainly successful in this Application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's application to dispute a rent increase is allowed. I order that the monthly rent for the tenant's rental unit remains at \$648.00 for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

The landlord's 10 Day Notice, dated June 6, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to perform repairs as noted above, by the deadlines indicated.

I order the tenant to deduct \$204.00 from future rent payable to the landlord at this rental unit, in full satisfaction of the monetary award made at this hearing.

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 12, 2016

---

Residential Tenancy Branch