



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNC, CNR, MNDC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute an additional rent increase; to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities; to cancel a One Month Notice to End Tenancy for cause; and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served in person on August 31, 2016. The tenant amended his application on September 08, 2016 and served the landlord in person with the amended application on that date.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the tenant entitled to dispute an additional rent increase?
- Is the tenant entitled to an Order to cancel both the 10 Day and the One Month Notices to End Tenancy?

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The tenant testified that this tenancy started on either May or June, 2015 for a month to month tenancy. This was a verbal agreement between the parties. The rent was agreed at \$800.00 per month due on the 1<sup>st</sup> of each month.

The tenant testified that prior to him moving into the unit a friend of the tenants rented the unit. When that tenant vacated the tenant gave her \$200.00 of her \$400.00 security deposit back and the landlord returned \$200.00 to that tenant. This left the landlord with \$200.00 towards this tenant's security deposit. The landlord said that this was fine and did not ask the tenant to pay a further \$200.00.

The tenant testified that the landlord served the tenant with a One Month Notice to End Tenancy. The landlord had interviewed a girl to move into the unit with the tenant and that person had a dog. When the tenant returned home on August 17, 2016 he found the One Month Notice on his desk. The tenant disputed that he has not paid a pet damage deposit as none was asked for when this girl was moving into the unit.

The tenant testified that the landlord verbally informed the tenant that she was raising the rent by 10 percent. The tenant looked into this and told the landlord that she was not able to do this. The landlord then raised the rent by \$50.00 per month which the tenant paid in August and September, 2016. The tenant testified that no written notice of a rent increase was provided by the landlord and the tenant did not agree in writing to this increase.

The tenant testified that on September 04, 2016 when he got up in the morning he found a 10 Day Notice to End Tenancy on his door. This Notice states that he only paid

\$750.00 in rent for September and owes \$100.00 plus \$200 for a security deposit. The tenant referred to two receipts for rent for August and September provided in his evidence. The tenant testified that these receipts show he paid \$850.00 in rent for August, 2016 and \$850.00 in rent for September. The landlord has noted on the September receipt that \$850.00 was paid on September 01, 2016 for rent from September 01, 2016 and damage deposit of \$450.00. The tenant testified that the \$850.00 paid was his rent and he did not pay \$450.00 damage deposit.

The tenant seeks an Order to ensure his rent remains at \$800.00 per month until the landlord provides the tenant with a legal rent increase notice. The tenant seeks to have both Notices to End Tenancy cancelled and seeks to recover the \$100.00 he overpaid on his rent for August and September, 2016.

### Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's undisputed evidence before me.

With regard to the tenants application to dispute an additional rent increase; I refer the parties to s.42 and 43 of the *Act* which states:

### ***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.*

The legal percentage rate for a rent increase in 2016 is 2.9 percent. Therefore had the landlord provided the tenant with a rent increase notice as described above, the maximum amount the landlord could have increased the rent in 2016 would have been \$23.20. Consequently, as the landlord did not comply with s. 42 or s. 43 of the *Act* then I find the rent increase of \$50.00 is an illegal rent increase and the tenant is entitled to recover the amount paid of **\$100.00**.

The rent for this unit will remain at \$800.00 per month until such a time as it is increased in accordance to the *Act*.

With regard to the Ten Day Notice to End Tenancy for unpaid rent or utilities; the tenant has provided two rent receipts one for August, 2016 and one for September, 2016. The rent receipts state that the tenant paid \$850.00 in rent for each of these months. The ten Day Notice states that only \$750.00 was paid in September, 2016 when clearly this is not the case. Furthermore, rent is \$800.00 a month and was illegally increased to \$850.00 in August, 2016.

Therefore when the 10 Day Notice was issued and served upon the tenant there was no rent outstanding. Accordingly, I uphold the tenant's application and the 10 Day Notice is hereby cancelled and is of no force or effect.

With regard to the tenant's application to cancel the One Month Notice to End Tenancy for cause; where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a 1 Month Notice to End Tenancy for Cause the landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After consideration of the above, I find as the landlord did not attend the hearing and did not provide evidence to support the reasons given on the One Month Notice.

Consequently, as there is insufficient evidence to prove the reasons listed on the One Month Notice issued on August 12, 2016 I uphold the tenant's application and the One Month Notice is hereby cancelled and is of no force or effect.

### Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated September 03, 2016 and the One Month Notice for cause dated August 17, 2016, are cancelled and the tenancy will continue.

I HEREBY FIND in favor of the tenant's monetary claim. I order the tenant to deduct the amount of \$100.00 from November's rent. Making the rent payable for November, 2016 \$700.00.

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 19, 2016

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Residential Tenancy Branch

