



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, OLC, O, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought an Order canceling a 1 Month Notice to End Tenancy for Cause issued by the Landlord on March 3, 2017 and served March 12, 2017, as well as 1 Month Notice to End Tenancy for Cause issued on March 14, 2017 and served March 16, 2017 (the "Notices") an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* other unspecified relief and recovery of the filing fee.

The hearing was conducted by teleconference on April 20, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notices be cancelled?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act* and the *Residential Tenancy Regulation*?
3. Should the Tenant be granted recovery of the filing fee?

### Background and Evidence

When a Tenant applies to cancel a Notice to End Tenancy for Cause, *Residential Tenancy Branch Rules of Procedure* require the Landlord to present their evidence first as the Landlord bears the burden of proving the reasons cited for ending the tenancy.

The Landlord testified as follows. He confirmed that the tenancy began February 13, 2016. He further confirmed that the rental unit is a basement suite in the Landlords' home.

The Landlord testified that there was no written tenancy agreement in place.

The Landlord stated that the monthly rent is \$900.00 per month, including all utilities.

Introduced in evidence was a Notice of Rent Increase dated February 15, 2017 wherein the Landlord attempted to increase the rent by \$200.00 to \$1,100.00. The Notice was to take effect on the same day, February 15, 2017.

The Landlord stated that he became aware that the Tenant's mother came to live in the rental unit in February 2017.

Introduced in evidence was a copy of a flight itinerary indicating the Tenant's mother arrived on January 15, 2017 and is scheduled to fly out July 8, 2017.

The Landlord stated that as all utilities are included in the rent, he cannot afford to pay the additional utility costs associated with the Tenant's mother staying with her. He did not provide any evidence as to the amounts he claims his utility costs increased only to say it was "logical" they would.

The Landlord also stated that the Tenant was more familiar with the *Residential Tenancy Act* and he did not want that type of person living in his house.

The Landlord also stated that four days ago, the Tenant parked a car without insurance in his driveway.

In response to the Landlord's testimony, the Tenant's counsel submitted as follows: She stated that the rental unit has one bedroom and the Tenant's child is 2.5 years old. She further stated that the rental unit is 1,050 square feet.

She further confirmed that the Tenant's mother came from Russia to visit with the Tenant and her granddaughter on January 15, 2017. She confirmed that her mother, M.K. sleeps in the bedroom with her granddaughter. The Tenant has been sleeping in the living room. Counsel submitted that the Tenant's mother is leaving on July 8, 2017.

Counsel further submitted that the Tenant's mother does not intend to stay past July 8, 2017.

Counsel submitted that this is not a valid eviction notice. She stated that the Landlord tried to illegally increase the rent and when that wasn't successful, he issued the eviction notice.

She also submitted that section 9 of the *Regulations*, provides that the Tenants can have guests and the Landlord cannot restrict this. It is clear the Tenant's mother is visiting, and is not an additional occupant. Further, she submitted that even if she was an occupant this is not unreasonable number as this is a 1,050 square foot rental unit and the Tenant, her two and a half year old daughter, and her mother are not unreasonable.

### Analysis

After considering of the evidence filed, the testimony of the parties and on a balance of probabilities, I find that the Notices must be cancelled.

I find the Landlords have failed to prove the Tenant has allowed an unreasonable number of occupants in the rental unit and have therefore failed to prove the reasons cited on the Notices.

Section 9 of the *Residential Tenancy Regulation* provides as follows:

#### **Occupants and guests**

- 9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

I accept the Tenants evidence that her mother is visiting from Russia and intends to return July 8, 2017. I further accept that the rental unit is 1,050 square feet and find that it is not unreasonable for two adults and a small child to occupy such a space.

In all the circumstances, I find the Landlords have failed to prove the Tenant's mother's presence in the rental unit is unreasonable and I therefore cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Notice of Rent Increase filed in evidence fails to comply with the *Residential Tenancy Act* and the *Residential Tenancy Regulation*. The amount requested by the Landlord is in excess of

the permitted amount and the Landlord failed to give the required three months' notice of any increase.

Further, even in the event had the Landlords wished to charge an amount for additional occupants pursuant to section 40(b) of the *Act*, the Landlords were required to include such a provision in a written tenancy agreement (section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*]). In this case, no written agreement exists and therefore the Landlords' request for additional rent is not permitted.

I find that the Landlords failed to comply with the *Act* And the *Regulations* and therefore, the Notice of Rent Increase issued on February 15, 2017 is of no force and effect. The monthly rent payable by the Tenant shall remain as \$900.00 until increased in accordance with the *Act*.

I accept counsel's submissions that the Landlords issued the Notices when the Tenant refused to pay the illegal rent increase. The Tenant's written responses to the Landlords were provided in evidence and were eloquent and legally accurate. It is notable that the Landlord, G.M., testified that he did not want the Tenant living in his house because she was more knowledgeable about the *Residential Tenancy Act*. G.M. was cautioned that it is his responsibility to familiarize himself with his legal responsibilities as a Landlord and that he and his spouse must, at all times, comply with the *Act* and the *Regulations*.

The Tenant, having been successful in her application is entitled to recover the \$100.00 filing fee. I authorize her to reduce her next month's rent by \$100.00 as compensation for this amount.

### Conclusion

The Notices are cancelled. The Tenant is entitled to recovery of her filing fee and may reduce her next month's rent by \$100.00 as compensation for this amount.

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: April 20, 2017

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Residential Tenancy Branch