



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution by Direct Request. The matter was subsequently referred to a participatory hearing, held on September 1, 2017 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlords, S.E. and F.E., provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Landlords testified the Notice of Hearing along with supporting documentary evidence was sent to the Tenant by registered mail on August 5, 2017. I find the Tenant received this package on August 10, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on April 1, 2014, rent was initially set at \$680.00, and a security deposit of \$340.00 was paid by the Tenant. The Landlords provided documentary evidence to show that on October 1, 2016, they sent a typed letter to the Tenant stating that they would increase rent by \$30.00 starting January 1, 2017. The Landlords testified that they did not use the proper Notice of Rent Increase form because they did not know they had to. The Landlords stated they thought the letter they provided would suffice as an acceptable way to increase rent.

The Landlords further testified that the Tenant started paying the increased rent of \$710.00 in January of 2017, and continued to do so up to and including June of 2017. The Landlords further stated that on July 1, 2017, no rent was paid, and they issued the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was posted to the Tenant's door on July 6, 2017, and witnessed by F.E.

The Landlords testified that the Tenant paid them \$530.00 on July 13, 2017, towards July's rent, and also paid \$710.00 in August for that month's rent.

The Tenant did not attend the hearing to dispute the evidence provided by the Landlord.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find that the Landlords failed to comply with the *Act* when increasing the Tenants rent from \$680.00 to \$710.00 in January 2017. Section 42 of the *Act* specifies the following:

**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.**

Since the Landlords failed to comply with the *Act* on this matter, and used the incorrect form, I find the rent increase was invalid. As such, the Tenant was only required to pay \$680.00 per month, despite paying \$710 each month for most of 2017. Leading up to the 10 Day Notice, I find the tenant overpaid rent as follows:

<b>Month (2017)</b>	<b>Amount Due</b>	<b>Amount Paid</b>
January	\$680.00	\$710.00
February	\$680.00	\$710.00
March	\$680.00	\$710.00
April	\$680.00	\$710.00
May	\$680.00	\$710.00
June	\$680.00	\$710.00
<b>Accumulated Overpayment as of July 1, 2017:</b>		<b>\$180.00</b>
		<b>(6x\$30.00)</b>

Given the above overpayment by the tenant, which amounted to \$180.00 as of July 1, 2017, I find the Tenant was only required to pay \$500.00 for the month of July 2017, rather than the established monthly rent of \$680.00.

The Landlords issued the 10 day Notice on July 6, 2017, by posting it to the door of the rental unit. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on July 9, 2017. The Tenant had 5 days to pay rent in full or file an application for dispute resolution.

The Landlords testified that the Tenant paid \$530.00 on July 13, 2017, which was within 5 days of receiving the 10 Day Notice. Given the Tenant only owed \$500.00 at the time the 10 Day Notice was issued, as specified above, I find the tenant paid outstanding rent, in full within the required time. Accordingly, I find the 10 Day Notice is of no force and effect.

While I have accounted for and discussed some overpayments made by the Tenant, as detailed above, I encourage parties to discuss and resolve any remaining overpayments. Should parties be unable to resolve these matters, they may apply for dispute resolution.

### Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety without leave to reapply.

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: September 01, 2017

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Residential Tenancy Branch