



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNR, DRI, FF

### Introduction

This hearing was held in response to the tenant's application for dispute resolution in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued on September 20, 2017, to dispute an additional rent increase and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. The landlord attended at the scheduled start time and was affirmed. The tenant entered the hearing nine minutes after the hearing began. The tenant was then affirmed.

I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing; none was submitted. The parties were able to present affirmed oral testimony and to make submissions during the hearing.

### Issue(s) to be Decided

Should the 10 Day Notice to end tenancy for unpaid rent and utilities (the Notice") issued on September 20, 2017 be cancelled?

Has the landlord issued a rent increase that does not comply with the Act?

### Background and Evidence

The tenancy commenced in January 2017. Rent is \$925.00 due on the first day of each month.

There was no dispute that in May 2017 the tenant paid \$650.00 rent; leaving \$275.00 owed.

The parties confirmed that the tenant had a roommate move into the rental unit in July 2017. The landlord said that a \$100.00 rent increase was then imposed as that is a

standard term of the tenancy agreements. The landlord confirmed that the tenant paid an additional \$200.00 in July and \$100.00 in August.

The tenant said it was not until her roommate asked to see the tenancy agreement that the tenant realized there was no term requiring additional rent payment for another occupant. The landlord confirmed that an error had been made and that the tenancy agreement did not include a clause requiring additional payment. However, the landlord felt the tenant had agreed to the rent increase.

The parties agreed that on September 20, 2017 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of September 30, 2017 was given to the tenant. The tenant disputed the Notice the same day.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$275.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days. The rent arrears indicated on the Notice was for rent that was due in May 2017.

During the hearing the landlord confirmed that since May 2017 the tenant has paid the \$275.00 with \$25.00 left owed to the tenant. The tenant said that the additional rent had been paid as the tenant believed she must pay it.

The landlord confirmed the Notice ending tenancy was issued after the May rent arrears had been paid in full, including an additional \$25.00.

### Analysis

Section 13 of the Act requires that a tenancy agreement set out the rent owed and, if the rent varies with the number of occupants, the amount by which it varies. Section 14 of the Act allows the terms of a tenancy to be amendment only if the parties agree to the change.

I find that the tenant did not agree to the increase in rent; that the tenant believed the increase was a requirement of the current tenancy agreement; as the landlord had indicated to the tenant. Once the tenant became aware of the absence of a term requiring an increase in rent for an additional occupant the tenant ceased paying the additional sum of rent. I find that the tenant was entitled to cease making additional rent payments, as the rent increase was imposed and not set out as a term of the tenancy as required by the Act. The landlord has made an inadvertent error in believing the term had been included in this tenancy agreement.

Therefore, since May 2017 I find that the tenant has paid an additional \$300.00 rent. As a result of those additional rent payments I find that the rent arrears from May 2017 had been paid in full by August 2017; with a \$25.00 overpayment.

During the hearing the landlord confirmed the rent overpayment and will return \$25.00 to the tenant today. Pursuant to section 67 of the Act I find that the tenant is entitled to payment in the sum of \$25.00. If the rent refund is not provided to the tenant by December 31, 2017 I find that the tenant may deduct \$25.00 from January 2018 rent.

As the rent had been paid in full at the time the Notice ending tenancy was issued I find that the Notice is of no force and effect and that it is cancelled. The tenancy will continue until it is ended in accordance with the Act.

As the tenant's application has merit I find pursuant to section 72 of the Act that the tenant is entitled to recover the \$100.00 filing fee cost from the landlord. The tenant may deduct \$100.00 from the next month's rent due. The landlord is at liberty to pay the filing fee directly to the tenant, not later than December 31, 2017, in which case the rent reduction may not be made.

### Conclusion

The Notice ending tenancy for unpaid rent issued on September 20, 2017 is cancelled.

Rent is \$925.00 per month. The tenant is not required to pay an increase in rent for additional occupants.

The landlord is to pay the tenant \$25.00 for the rent overpayment, or that sum may be deducted from rent owed.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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: December 04, 2017

---

Residential Tenancy Branch