



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession based on unpaid rent and a Monetary Order. The Landlord also applied for the filing fee.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 2018, the Landlord sent Tenant A.S. the Notice of Direct Request Proceeding by registered mail to the rental unit. The Landlord submitted into evidence a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the Proof of Service of the Notice of Direct Request Proceeding supported by a copy of the registered mail receipt and tracking number and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant A.S. will have been deemed served with the Direct Request Proceeding documents on March 21, 2018, the fifth day after their registered mailing.

The Landlord did not submit any evidence proving the service of the Direct Request Proceeding materials on the Tenant A.H. In accordance with section 89 of the *Act*, I find that the Tenant A.S. was not duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

3. Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The Landlord submitted the following evidentiary material:

- A signed copy of a residential tenancy agreement, indicating a monthly rent of \$1,350.00, due on the first day of each month for a tenancy commencing on November 1, 2016.
- A signed copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 4, 2018, with a stated effective vacancy date of March 14, 2018, for \$50.00 in unpaid rent for the month of March, 2018.
- A signed copy of Proof of Service for Notice to End Tenancy (Service Document) by way of posting the 10 Day Notice to the door of the rental unit, dated March 4, 2018.
- A copy of a Direct Request Worksheet showing the monthly breakdown of rent on the 10 Day Notice.
- A copy of a Notice of Rent Increase dated July 30, 2017 for a rent increase in the amount of \$50.00 with the new rent payable on November 1, 2017.
- A copy of a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm the mailing of the Notice of Rent Increase.
- A letter from the Landlord to the Tenants dated March 6, 2018 informing the Tenants that a “miscalculation was made on the rental increase. The rental increase should have been \$49.95 not \$50.00. Therefore I will deduct \$.20 on your next rent payment for April.” ,[Reproduced as written]

### Analysis

Section 43(1) of the *Act* states that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations. Section 22(1) of the *Residential Tenancy Act Regulations* state that “for the purposes of section 43(1) of the *Act* [amount of rent increase], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{Percentage amount} = \text{inflation rate} + 2\%$$

Pursuant to the rent increase calculator located on the Residential Tenancy Branch website, the maximum rent increase percentage for 2017 was 3.7%.

The original tenancy agreement dated November 1, 2016 provided that the monthly rent, due on the 1<sup>st</sup> of the month was \$1,350.00. The Notice of Rent Increase provided by the Landlord was dated July 30, 2017 with an effective date of November 1, 2017 in the amount of \$50.00. The maximum rent increase allowed was  $\$1,350.00 \times .037 =$

\$49.95. I find that the Landlord issued an illegal rent increase as it was greater than the maximum allowable under section 43 of the *Act*. I find that the entire Notice of Rent Increase dated July 30, 2017 is invalid as it purports to raise the rent over and above the legal limit and is therefore of no force or effect.

Accordingly, as rent is \$1,350.00 per month and not \$1,400.00, I find that the Tenants do not owe \$50.00 in rent to the Landlord as per the 10 Day Notice. Therefore, the Landlord's 10 Day Notice, dated March 4, 2018, is set aside and of no force or effect.

### Conclusion

The landlord's 10 Day Notice, dated March 4, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the Landlord's application for a monetary award for unpaid rent without leave to reapply.

I dismiss the Landlord's application for an Order of Possession without leave to reapply.

I dismiss the Landlords application for filing fees 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: April 11, 2018

---

Residential Tenancy Branch