



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TELFORD LIVING INC. C/O: MARTELLO PROPERTY SERVICE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, DRI, ERP, LRE, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package in person on December 7, 2017. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

The tenant clarified that he seeks an order cancelling the 10 Day Notice, a determination regarding the notice of rent increase, a monetary order for recovery of emergency repairs (cost of changing locks) and an order for the landlord to comply with the Act by serving a notice of rent increase with 3 months' notice in advance?

Extensive discussions during the hearing caused it to be adjourned for a lack of time. Both parties were notified that an interim decision would be issued along with a notice of an adjournment of the hearing to a new scheduled date and time. Both parties acknowledged their understanding.

On May 3, 2018 the hearing was reconvened with neither party present. A review of the Residential Tenancy Branch File confirmed that both parties were provided with the interim decision and a copy of the notice of an adjourned hearing. However, due to an administrative error the hearing was rescheduled to for May 4, 2018 at 1:00 pm, both parties confirmed acceptance of the rescheduled hearing. On May 4, 2018, both parties attended the hearing via conference call and the hearing resumed.

#### Preliminary Issue(s)

During the hearing it was clarified with both parties that the tenant seeks an order for the landlord to not change the locks without prior notice to the tenant and an order for the landlord to serve a notice of rental increase as per the Act. It was clarified with both parties that such requests are already required under the Act and that a further order is not required. Both parties confirmed that since the initial lock change by the landlord that no further action is required and that if the landlord wishes to initiate a rent increase that a notice under the act is required. As such, no further action is required at this time. The hearing proceeded on the below listed issues.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to a determination regarding their dispute of an additional rent increase?

Is the tenant entitled to a monetary order for the cost of emergency repairs?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that no signed tenancy agreement was made. The tenant claims that he assumed the tenancy approximately 7 years ago from the previous listed

tenants. The landlord took control of the rental building approximately 1 year ago and was provided the tenant's name from a resident list (from the previous landlord). Both parties agreed at the beginning of this relationship the monthly rent was \$830.00 payable on the 1<sup>st</sup> day of each month.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated December 4, 2017 by Canada Post Registered Mail on December 4, 2017. The 10 Day Notice states that the tenant failed to pay rent of \$283.65 that was due on December 1, 2017 and provides for an effective end of tenancy date of December 19, 2017.

The tenant argues that the landlord has illegally increased the rent without proper notice. The landlord claims that a notice of rent increase was served to the tenant via the original named tenants' names via Canada Post Registered Mail on August 15, 2017. The tenant disputes this stating that as he was not the named recipient and he could not sign for such a package. The landlord claims that a second attempt of service via Canada Post Regular Mail was sent to the tenant on September 19, 2017. The tenant disputed that no such notice was received. The landlord was unable to provide any proof of service. The landlord claims that a third attempt of service was made on September 27, 2017 which was posted to the rental unit door. The tenant disputed this claim stating that no such notice was received. The landlord was unable to provide any proof of service. The landlord claims that a fourth attempt of service was made on October 4, 2017 in which the notice of rent increase was served to the tenant as part of an email from the landlord to the tenant. The tenant disputed this claim. A review of the email did not provide any details of a notice of rent increase originally from August 15, 2017 or October 4, 2017. The only mention of a rent increase document is "rent Increase 2015". The landlord was unable to provide any clarification or details on any proof of service regarding the notice of rent increase for 2017.

Both parties confirmed that the landlord served a notice of a rent increase dated November 1, 2017 effective on November 1, 2017 which provides a rent increase of \$30.00 for a total rent of \$860.00 from the original \$830.00.

The tenant seeks an order cancelling the 10 Day Notice dated December 4, 2017 based upon an "illegally" issued Notice of a Rent Increase served to the tenant on November 1, 2017 to be effective on November 1, 2017 for an increase of \$30.00 for a total monthly rent of \$860.00; the tenant also seeks a monetary order for recovery of \$223.65.

During the hearing the landlords' agents conceded the notice of rent increase was improperly served and as such, cancel the notice of rent increase dated November 1, 2017 and confirmed that current rent is \$830.00 per month.

Both parties confirmed in their direct testimony that subsequent to the 10 Day Notice dated December 4, 2017, the tenant has paid rent of \$830.00 per month. The landlord also claims that they still seek an end to the tenancy as per the 10 Day Notice and that the tenant has failed to pay rent for January 2018.

During the hearing, the tenant claimed that a cheque for \$283.65 was paid to the landlord for the cost of changing the locks and for a rental increase. Both parties confirmed that a cheque for \$283.65 was issued to "landlord of..." and was not processed by the landlord due to the incorrect naming of the landlord on the cheque. Both parties confirmed that the landlord has not cashed this cheque. The tenant provided conflicting and contradictory testimony regarding this claim. Repeated attempts to discover the details of this claim were unsuccessful. As such, during the hearing this portion of the tenant's application for the cost of emergency repairs was dismissed

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Both parties confirmed that the landlord serve the tenant with a 10 Day Notice dated December 4, 2017 on December 4, 2017 via Canada Post Registered Mail.

In this case, the 10 Day Notice is based upon a notice of a rent increase dated November 1, 2017 to begin a rent increase on November 1, 2017 for \$30.00 making the monthly rent \$860.00 from the original \$830.00. As the notice of rent increase was cancelled by the landlord, I find that the 10 Day Notice which relies on this notice of rent increase is set aside. I also note that the landlord's agents provided undisputed affirmed testimony that rent was accepted after the effective end of tenancy date. The landlord claimed that notice was given to the tenant verbally that rent was being accepted for "use and occupancy only". This was disputed by the tenant. The landlord was unable to provide sufficient evidence to support this claim. As such, the 10 Day Notice dated December 4, 2017 is cancelled.

Conclusion

The tenant's application to cancel the 10 Day Notice is granted.

The notice of rent increase was cancelled by the landlord. The 10 Day Notice dated December 4, 2017 is set aside and cancelled. The tenancy shall continue. The tenant's application for the cost of emergency repairs was dismissed.

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: May 31, 2018

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Residential Tenancy Branch