



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR CNC DRI OPC

### **Introduction**

Both parties attended the hearing and gave sworn or affirmed testimony. The parties confirmed a 10 Day Notice dated March 12, 2018 was served by posting it on the door on March 12, 2018 and a One Month Notice to End Tenancy dated March 12, to be effective April 11, 2018 was also served by posting it on the door on March 12, 2018. The effective date on the One Month Notice is automatically corrected to April 30, 2018 pursuant to section 53 of the *Residential Tenancy Act* (the Act) as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated March 16, 2018 by registered mail but the landlord refused it. The landlord confirmed they had refused it but had found out the date of the hearing by contacting the Residential Tenancy Branch. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. I find the fact that the landlord refused the registered mail does not invalidate the service. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a Notice for unpaid rent pursuant to section 46;
- b) To cancel a notice to end tenancy for cause pursuant to section 47;
- c) To dispute an illegal rent increase; and
- d) To claim aggravated damages due to the landlord's disturbance of their peaceful enjoyment.

### **Issue(s) to be decided:**

Is the tenant entitled to any relief? Was there an illegal rent increase? Has the tenant proved on the balance of probabilities that they are entitled to aggravated damages? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced December 15, 2015, it is now a month to month tenancy, rent is \$1141 a month and a security deposit of \$550 was paid but no pet damage deposit was paid. Both parties confirmed the unpaid rent was paid in cash on March 15, 2018, within a few days of service of the 10 Day Notice so that is no longer in issue. The landlord served a One Month Notice to End Tenancy for the following reasons:

- a) The security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The parties confirmed that the pet damage deposit had never been paid although it was in the signed lease. The tenant said it was not mentioned after they failed to pay it in 2015. The landlord denies this and states they made multiple efforts to collect it; he even made up two receipts expecting to collect it in two payments in March 2016 but the tenants did not follow through. They finally served them with this Notice to End Tenancy. The tenant said they could pay it now but the landlord said they had had promises in the past which did not materialize. After some discussion, the parties negotiated a move-out date of June 30, 2018.

The tenant also claims there was an illegal increase of rent. The landlord said their lease expired last year and he told them the rent would be raised to \$1450 as neighbourhood rents had increased (an increase of \$309). He said they agreed and paid \$1450 in January but then objected and reverted back to their previous rent of \$1141 per month. They deducted their January overpayment and paid only \$832 for February 2018. The landlord said since the lease expired on December 2017, they thought they could charge a higher rent for the next fixed term.

The tenants also claim compensation of \$35,000 for aggravated damages. They say the landlord engaged in intimidating behaviour, threatening to evict them on December 31, 2017 and harassing them. The landlord said he tried to raise the rent and the tenants said this was extortion and called the police. The police told them the Residential Tenancy Branch handled such matters. The landlord said he served them two Notices to End Tenancy and went to their home on April 1, 2018 to collect rent. He said he is a senior and did not threaten or intimidate anyone but the tenant becomes very angry.

After the discussion concerning the date of the Order of Possession, the tenant appeared to be upset and told the landlord he would see him in court and abruptly left the conference.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the 10 Day Notice is of no effect pursuant to section 46 of the Act as the tenant paid the outstanding rent within 5 days of service of the Notice.

In respect to the section 47 cause, I find the undisputed evidence is that the tenant did not pay the pet damage deposit within 30 days as required by the tenancy agreement. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant regarding their requests for it and the tenants' failure to follow through on promises. The landlord's credibility is supported by copies of the advance receipts he prepared for two expected payments that never materialized.

I find the increase of rent is limited to 4% in 2018 and a Notice of Rent Increase must be served according to section 43 of the Act at least 3 months prior to the increase. Therefore, I find the landlord illegally increased the rent but the tenant legally deducted any extra money he paid pursuant to section 43(5) of the Act.

Concerning the tenants' claim for aggravated damages, I find Residential Policy Guideline 16 states *"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.* I find insufficient evidence to support the tenants' claim for aggravated damages. I find the weight of the evidence is that the landlord was exercising their legal rights when they served two Notices to End Tenancy on the tenant and thought the tenant had agreed to a rent increase greater than allowed by section 43 of the Act. I note section 43 of the Act does note that rent can be increased if agreed to by the tenant in writing I find insufficient evidence that the landlords intimidated the tenants or threatened them.

I find insufficient evidence of damage or loss caused to the tenants by the landlord's behaviour.

I note harassment is defined online in the Merriam Webster dictionary as "to annoy persistently". I find insufficient evidence that the tenants were persistently annoyed by the landlord. Although the tenant provided sections of the Criminal Code regarding extortion, I find raising the rent in a mistaken belief that the tenant had consented is not extortion. I further find this does not apply in civil proceedings as stated in the last section provided by the tenant. These proceedings are civil proceedings.

I dismiss the tenants' application in its entirety for the reasons stated above. In these circumstances, section 55 of the Act states a landlord is entitled to an Order of Possession.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The filing fee was waived. The tenancy was at an end on April 30, 2018 (as corrected). . An Order of Possession is issued to the landlord effective June 30, 2018 as agreed by them.

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 23, 2018

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Residential Tenancy Branch