



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNC, CNR, MNDCT, LRE, FFT

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant for the following:

- Disputing a rent increase;
- Requesting a cancellation of a One Month Notice to End Tenancy for Cause;
- Requesting a cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent;
- Requesting a monetary order for compensation in the sum of \$500.00;
- Suspending the Landlord’s right to enter the rental unit; and
- Filing fee of \$100.00.

The Tenant filed supplemental information stating that she is withdrawing her application to suspend the Landlord from entering the rental unit as that issue has been resolved; the Application is hereby amended to reflect that.

The Landlord and Tenant both appeared for the scheduled hearing. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy pursuant to section 47 of the Residential Tenancy Act ("Act")?

Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the Act?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Is the Tenant entitled to a review of the rent increase, pursuant to sections 41 and 43 of the Act?

Is the Tenant entitled to a monetary order for compensation pursuant to section 67 of the Act?

Is the Tenant entitled to payment of the filing fee, pursuant to section 72 of the Act?

#### Background and Evidence

This tenancy began March 8, 2018 as a verbal agreement between friends for \$850.00, payable bi-weekly at \$425.00; the Tenant also agreed to cover utilities and do basic repairs and maintenance; no security deposit was paid. The parties had agreed that the Tenant's pay period coincided with the Landlord's expenses and so payments continued in that fashion for the first few weeks of the tenancy.

In April of 2018, about a month after the start of the tenancy, the Landlord contacted the Tenant and explained that her personal circumstances required her to increase the monthly rent to \$1,100.00 as of June 1, 2018. The Tenant was told that she was not required to commit to the new rent payment and could instead move out. The Tenant states she is a single mother and did not want to disrupt the children with a second move so quickly. The Landlord told her that she had another renter available, and the Tenant felt she had no choice but to pay the new rent amount. The Landlord states that the Tenant agreed in writing to the increase in rent and submitted electronic messages as evidence of that agreement.

At some point in the tenancy, the Landlord said people had commented that the lawn had grown long and she had the Tenant mow it; the Tenant states she didn't mow the back yard because the Landlord was laying paving stones, but the Landlord denies telling her not to bother doing the back yard. The Tenant explained that her children had lost a toy on the roof and climbed on top of a shed to reach the roof to retrieve it; she told the story to the Landlord, who advised the Tenant the shed was not safe to stand on. The Tenant says the children never climbed the roof again, but the Landlord states they were going to climb up to watch fireworks on Canada Day. A similar incident occurred when the Tenant's child climbed a fence and was told to stay off. There were no incidents of property damage or injury.

The parties testified as to other ongoing issues which the Landlord claims as reasons to end the tenancy. The Tenant told the Landlord she installed a paper towel holder which the Landlord presumed had always been there. The parties both testified as to some confusion over payment of utilities, some of which were in the Tenant's name and later transferred to the Landlord, who claims there is about \$130.00 owing now as of this week. The Tenant claims she is diligent to pay the Landlord as soon as she is advised of any amount owing.

On July 20<sup>th</sup>, the Landlord presented a written tenancy agreement with new rent of \$1,300.00 a month; she claims it was not a rent increase as it would be including the utilities. The Tenant was not willing to sign the agreement or pay any increase in rent. The Tenant asked that the rent be paid monthly starting in August and the Landlord agreed. The Tenant states that she paid the original rent amount of \$850.00 on August 3<sup>rd</sup> and September 1, and states she is not in arrears.

The Tenant states that the Landlord did not provide the proper form required to increase the rent and did not provide her with the three months notice before increasing the rent. She states that she was forced to pay an additional \$125.00 for each of her rent payments in June and July, resulting in a \$500.00 overpayment; she has resumed paying the \$850.00 a month as was originally agreed between the parties. The Tenant is requesting an order that the rent increase be denied and for a monetary order for reimbursement of the extra \$500.00 rent she paid in June and July.

The Landlord served a One Month Notice to End Tenancy for Cause on July 31, 2018 with an effective date of August 31<sup>st</sup>; the reasons states were repeatedly late rent payments and putting the property at significant risk. She provided an eviction letter to the Tenant which outlines her concerns, mainly the Tenant's non-compliance with the verbal rental agreement. She stated that the yard care was not up to expectations and that the Tenant's children were possibly endangering the property due to the incident where they went on the roof and that the Tenant stated she once put a cigarette into a garbage bin, which apparently did no damage. The Landlord reported a broken light in the shed. The Landlord's letter says the paper towel holder caused permanent holes in the backsplash and that packing tape was used to put up a poster on a door. The letter also mentions issues with utility payments and cleanliness.

The Landlord also provided a spreadsheet with a list of dates she claims rent was due bi-weekly and states that the Tenant was one or two days late 7 of the 11 payments; the Landlord admits she did not contact the Tenant to complain of the late payments as they were friends, but she cites this now as a reason to evict the Tenant.

The Landlord then served a 10-Day Notice to End Tenancy dated August 1, 2018 on August 2, 2018 for August rent arrears of \$1,100.00, with a stated effective date of August 12, 2018. The Tenant had testified that she filed her dispute application and then paid the \$850.00 she felt was owing for August, on August 3, 2018. Both notices were posted on the Tenant's door and a witness signed the Proof of Service for each notice.

The Landlord is unwilling to continue the tenancy and requests an order of possession. The Landlord states that she has since served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use as of the end of August, which the Tenant does not intend to dispute. This third notice is not included with this Application.

### Analysis

The primary issue is whether or not this tenancy is to be terminated under the two notices served by the Landlord on the Tenant. Each notice will be considered below:

One Month Notice to End Tenancy for Cause:

The Landlord's Notice provided two reasons to end the tenancy pursuant to section 47, as indicated in bolding below:

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

**(b) the tenant is repeatedly late paying rent;**

...

**(d) the tenant or a person permitted on the residential property by the tenant has**

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

**(iii) put the landlord's property at significant risk;**

*(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;*

Based on undisputed testimony of the landlord, I find that the Tenant was served with the Notice to End Tenancy on July 31<sup>st</sup> by posting it on the Tenant's door, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the Act, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

As for the merits of the Notice, the Policy Guideline 38 states that at least three late payments will justify a notice under this section. The parties verbally agreed to payments of \$425.00 "bi-

weekly” based on the Tenant’s pay periods. The Tenant states that she paid the rent each month and that there was not any discussion about her payments being late. The Landlord admits that there is no agreement in writing as to the exact date of the payments required, only that they were bi-weekly, and that she did not raise concerns about payments she considered to be late because the parties were friends.

I find that the Landlord was accepting the payments made by the Tenant and there was no concern communicated between the parties that the payments were anything but what was agreed upon; I accept that the terms were being met and that the Tenant was paying bi-weekly as agreed upon. Accordingly, I find that the payments were not “late” and the Landlord is estopped from now putting forth an argument that the bi-weekly payments were for specific dates she indicates on a schedule; if these were the specific agreed-upon dates, then this should have been indicated in a written tenancy agreement between the parties to clarify expectations. I find that the Landlord has failed to provide sufficient evidence that the Tenant was late in her bi-weekly payments.

Furthermore, I have considered the evidence and find that the Landlord has failed to provide sufficient evidence of any significant risk to her property that would justify an end to the tenancy. The grass not having been mowed for 10 days and the cleanliness are not grounds for terminating a tenancy for this reason. Similarly, the children having accessed the roof and the fence, or the mention of a cigarette in a trash container also does not imply or suggest that the landlord’s property was at significant risk so as to warrant and end to this tenancy.

Accordingly, I am cancelling the One Month Notice to End Tenancy; the Notice is of no force or effect.

#### 10-Day Notice to End Tenancy:

The 10-Day Notice to End Tenancy is based on the new increased rent amount of \$1,100.00, which the Landlord states was payable on August 1, 2018. I note that the Notice was dated August 1<sup>st</sup>, although technically the rent would not have been in arrears until the 2<sup>nd</sup>, which is when the notice was delivered to the Tenant in any event.

The Notice complies with section 52 in form and in content. The only matter in dispute is whether or not the rent was, in fact, in arrears at the time the notice was served; the Tenant filed this notice to dispute this issue. The Landlord argues that the rent was increased by way of agreement from \$850.00 payable bi-weekly to \$1,100.00 payable on the first of each month. The Tenant is disputing this rent increase and filed this Application on August 2, 2018, both to dispute the Notices to End Tenancy and the rent increase.

In order to determine whether or not the Tenant is in arrears, one must first consider what the monthly rent amount was agreed at. There is no dispute that the parties initially agreed to \$850.00 per month, the Landlord stating this was below market rate and did not cover her

monthly expenses. She states it was only intended to be temporary, but there is no evidence before me to suggest when and if that rent was to increase from \$850.00 per month.

The Tenant submitted arguments with respect to the rules and regulations on adjusting rent. I note that under section 41 of the Act, rent increases are to be adjusted only in accordance with the Act and regulations:

***Timing and notice of rent increases***

**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 payable for the rental unit;*

*(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**.*

*(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.*

***Amount of rent increase***

**43** (1) *A landlord may impose a rent increase only up to the amount*

*(a) **calculated in accordance with the regulations,***

*(b) ordered by the director on an application under subsection (3), **or***

*(c) **agreed to by the tenant in writing.***

*(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.*

*(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.*

*(4) [Repealed 2006-35-66.]*

*(5) **If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. [bolding added]***

I find that the amount of the rent increase does not comply with the adjustment amount allowed under the Act or regulations, nor was proper notice of the rent increase provided by the Landlord. The rent increase was made less than 12 months after the start of the tenancy.

Despite not being compliant with section 43, the Landlord states that the rent increase is still enforceable as it was “agreed to by the tenant”, as per section 43(1)(c).

Policy Guideline 37 of the Residential Tenancy Branch sets out the expectations regarding rent increases:

*“A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount **unless it is ordered by an arbitrator**. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant’s written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the **tenant’s signed agreement** to that increase.*

*The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increase. **The landlord must issue to the tenant a Notice of Rent Increase**. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. **Tenants must be given three full months’ notice of the increase.***

***Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.”** (bolding added)*

I have reviewed the evidence filed by the Landlord regarding any agreement between the parties to increase the rent. I find that the Tenant felt obligated to accept the rent increase to \$1,100.00 per month to avoid having to relocate so soon after moving in. I further find that the rent increase was not agreed to by the Tenant with a signed agreement. The increase was not provided using the proper form, nor with three month’s notice. Accordingly, I find that the rent increase is not in compliance with the guidelines and expectations. The Tenant’s Application was filed to dispute the rent increase and I find that there was no signed agreement in place for the rent increase and that the Landlord is not entitled to payment of the \$1,100.00 per month she claims she is owed. The rent remains at the \$850.00 per month, now payable on the 1<sup>st</sup> day of each month as per the verbal agreement.

Under section 46 of the Act, a landlord may end a tenancy for rent arrears by serving a 10 Day Notice to End Tenancy. Although the Notice was signed by the Landlord on the 1<sup>st</sup> of the month, it was not delivered or served on the Tenant until the rent was determined to be overdue, on the 2<sup>nd</sup> of the month. The Tenant has 5 days from service to pay the arrears or file a dispute notice. I find that she has paid the rent arrears of \$850.00 as of August 3, 2018 and that the notice is hereby cancelled and of no force or effect. Accordingly, the tenancy shall continue until such time it is terminated by either party with proper notice.

I am satisfied that the calculations submitted by the Tenant with her rent payments correctly assess the amount of the overpayment in the amount of \$500.00. As the rent increase is disallowed, I find that the Tenant is entitled to reimbursement of \$500.00 for rent she overpaid in June and July, as well as her \$100.00 filing fee. ~~This monetary award of \$600.00 can be applied as a credit against her next month's rent.~~

The Landlord shall pay the Tenant the sum of \$600.00. This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

#### Conclusion

The One Month Notice to End Tenancy for Cause dated July 31, 2018 is cancelled and of no force or effect.

The 10-Day Notice to End Tenancy for Rent Arrears dated August 1, 2018 is cancelled and of no force or effect.

~~The Landlord shall grant the Tenant a rent credit of \$600.00 against her next month's rent as reimbursement for the overpayment of rent and the filing fee awarded in her favour.~~

The Landlord shall pay forthwith to the Tenant the sum of \$600.00.

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 25, 2018

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Residential Tenancy Branch

Correction Dated: October 22, 2018