



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, CNC, OPR, OPC, OPL, MNR, FFL, FFT

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (*"the Act"*).

On October 5, 2018, the Tenant applied, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. On October 10, 2018, the Tenant amended their application to dispute a rent increase; to cancel a 1 Month Notice To End Tenancy For Cause; and for a monetary order for overpaid rent.

On October 17, 2018, the Landlord applied for an order of possession for the rental unit based on the issuance of a 1 Month Notice To End Tenancy For Cause; and the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. On October 31, 2018, the Landlord amended his application to include a request for an order of possession based on the issuance of a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 31, 2018.

The matter was set for a conference call hearing. Both parties were present at the hearing. The Tenants were assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to

cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the issuance of the notices to end tenancy. The parties other claims are dismissed with leave to reapply.

The Landlord's request to amend his application to include the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 30, 2018, is dismissed with leave to reapply. Under section 55 (2) (b) of the Act a Landlord may request an order of possession of a rental unit if the Tenant has not disputed the notice and the time for making that application has expired. The Landlord's application for an order of possession based on this 2 Month Notice was premature as it was filed prior to the expiry of the 15 days that the Tenant has to accept or dispute the Notice.

#### Issues to be Decided

- Is the tenancy ending due to non -payment of rent?
- Did the Tenant receive illegal rent increases from the Landlord?
- Does the Landlord have sufficient cause to end the tenancy?

#### Background and Evidence

The parties testified that the tenancy began on May 1, 2015. At the start of the tenancy, rent in the amount of \$825.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$412.00.

#### 10 Day Notice

On June 1, 2016, the Landlord issued a rent increase in the amount of \$50.00. The rent due became \$875.00.

On June 1, 2017, the Landlord issued a rent increase in the amount of \$100.00. The rent due became \$975.00

In June 2018, the Landlord agreed to reduce the rent to \$950.00 per month.

On September 27, 2018, the Landlord served a letter to the Tenant telling him to begin paying 25% of the house utilities; including hydro, sewage, garbage, and compost removal. The Landlord testified that the tenancy agreement does not require the Tenant to pay utilities. The Landlord testified that the Tenant did not agree to pay the utilities.

The Landlord testified that the Tenant did not pay any of the rent owing under the tenancy agreement for the month of October 2018.

The Landlord served the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2018. The Notice indicates that the Tenant failed to pay \$975.00; however, the Landlord acknowledged that the rent had been lowered to \$950.00 as of June 2018.

In reply, the Tenant testified that after the Landlord demanded that he pay 25% of utilities he looked into the rent increases he had received from the Landlord and he determined that the rent increases are for more than is permitted under the legislation.

The Tenant submitted that for 2016, at a rent of \$825.00, a maximum increase of \$23.93 was permitted bringing the correct monthly rent payment to be \$848.93. The Tenant paid \$875.00 which is a \$26.07 per month overpayment. The Tenant overpaid the rent by \$312.84 from June 2016, to May 2017.

The Tenant submitted that for 2017, at the correct rent of \$848.93, a maximum increase of \$31.41 was permitted bringing the correct monthly rent to \$880.34. The Tenant paid \$975.00, an increase of \$100.00 each month which is a \$68.59 per month overpayment. Combined with the \$26.07 overpayment from 2016, that carried into 2017; the Tenant over paid the rent by \$94.66 each month. The Tenant over paid the rent in the amount of \$1,135.92 from June 2017, to May 2018.

The Landlord did not issue a rent increase in 2018. The Landlord lowered the rent to \$950.00 in June 2018. The Tenant paid \$950.00 in rent from June 2018, to September 2018. The corrected allowable monthly rent is \$880.34. The Tenant over paid the rent in the amount of \$278.64 from June 2018, to September 2018.

The Tenant submitted that the rent overpayment totals the amount of \$1,686.62.

The Tenant testified that he attempted to discuss the issue with the Landlord; however, the Landlord hung up on him. The Tenant testified that he sent the Landlord a letter dated September 18, 2018, informing the Landlord that the Tenant intended to withhold the overpayment from the future rent.

The Tenant testified that he withheld payment of October 2018, rent in the amount of \$950.00 because there is an overpayment of rent.

In reply, the Landlord confirmed that in June 2016, he increased the rent to \$875.00 and in June 2017, he increased the rent to be \$975.00.

### 1 Month Notice

The Landlord testified that he issued the Tenant a 1 Month Notice To End Tenancy For Cause dated October 2, 2018.

The reasons for ending the tenancy within the 1 Month Notice are:

*Tenant or a person permitted on the property by the Tenant has:*

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 1 Month Notice within the required timeframe.

The Landlord testified that the Tenant has had up to 5 cars on the rental property. The Landlord testified that he received letters from a bylaw officer which states that more than one unlicensed vehicle is not permitted to be parked on the property due to the zoning. The Landlord testified that he asked the Tenant to remove his cars.

The Landlord testified that the Tenant has removed his unlicensed cars. The Landlord stated that agrees that the tenancy may continue if the Tenant limits the number of cars on the property to two.

The Landlord testified that another occupant reported that the Tenant disturbed them by revving his engine late at night for three hours. The Landlord testified that he did not notify or call the Tenant to discuss the noise complaint. The Landlord did not provide any documentary evidence of a written noise complaint.

In reply, the Tenant testified that he discussed the issue of the cars when the tenancy began in 2015. The Tenant testified that the cars became an issue when another occupant of the property became a nuisance. The tenant submitted that the nuisance Tenant has vacated the rental property.

The Tenant stated in the hearing that moving forward; he agrees to only have two licenced vehicles on the rental property.

The Tenant denied that he ever revved his engine. The Tenant testified that the Landlord never discussed the complaint with him.

## Analysis

### 10 Day Notice

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Landlord issued illegal rent increases in 2016, and 2017, and the Tenant had a right to deduct the rent overpayments from the future rent owing.

I find that the Tenant overpaid the rent in the total amount of \$1,727.40. I order that the Tenant has the right to withhold \$1,727.40 from future rent payments.

I find that the correct monthly rent owing under the tenancy agreement is currently \$880.34 each month.

I find that the Tenant did not owe the Landlord \$950.00 for October, 2018, rent. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2018 is cancelled.

I find that the Tenant is not obligated to pay utilities and the Landlord cannot unilaterally change the terms and conditions of the tenancy agreement.

### 1 Month Notice

In the matter before me, the Landlord has the burden to prove that the reasons to end the tenancy in the 1 Month Notice are valid.

Based on the evidence and testimony of the parties before me, and on a balance of probabilities, I make the following findings:

I find that the Landlord did not notify or call the Tenant to discuss a noise complaint received from another occupant of the rental property. The Tenant refuted that the event ever happened. There is insufficient evidence from the Landlord to establish that the Landlord or another occupant was unreasonably disturbed by the Tenant.

I find that the Landlord has provided insufficient evidence to support ending the tenancy for the reasons listed in the 1 Month Notice. Therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated October 2, 2018.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful with his application to set aside the notices

to end tenancy. I authorize the Tenant to deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated October 2, 2018, and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2018, are cancelled.

The tenancy will continue until ended in accordance with the Act.

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: November 16, 2018

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Residential Tenancy Branch