



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNR, DRI

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 7, 2018 (the “Application”). The Tenants applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2018 (the “Notice”). The Tenants also disputed a rent increase that is above the amount allowed by law.

The Tenants appeared at the hearing with a witness. The Tenants did not end up calling the witness during the hearing. Nobody attended the hearing for the Landlord. The hearing process was explained to the Tenants who did not have questions when asked. The Tenants provided affirmed testimony.

Both the Tenants and Landlord had submitted evidence prior to the hearing. I addressed service of the hearing package and Tenants’ evidence.

Tenant L.C. testified that the hearing package was served on the Landlord in person at his residence around November 17, 2018. Tenant L.C. testified that the only evidence served on the Landlord was a copy of the tenancy agreement.

I accept the undisputed testimony of Tenant L.C. regarding service and find the hearing package was served on the Landlord in accordance with section 89(1)(a) of the *Residential Tenancy Act* (the “Act”). I am also satisfied that the hearing package was served in sufficient time to allow the Landlord to prepare for, and appear at, the hearing.

I note that the finding that the Landlord was served with the hearing package is supported by the fact that the Landlord submitted evidence for this hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord.

I note that the only documentary evidence I considered in relation to this matter was a copy of the tenancy agreement which was actually submitted by the Landlord.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Has there been a rent increase that is above the amount allowed by law?

### Background and Evidence

The written tenancy agreement is between the Landlord and Tenants as well as a third tenant. Tenant L.C. advised that this third tenant is no longer a tenant. The agreement relates to the rental unit. The tenancy started November 01, 2015 and is a month-to-month tenancy. Rent on the agreement is \$1,500.00 per month due on the first day of each month. The Tenants paid a \$700.00 security deposit and \$700.00 pet damage deposit in 2015. The agreement was signed by the parties in September of 2018.

Tenant L.C. testified that her mother used to live at the rental unit. She said that her mother passed away in May of this year and so her daughter and daughter's child moved into the rental unit. Tenant L.C. testified that when her mother was living at the rental unit, rent was \$1,400.00 per month. She said that, when her mother passed away, the Landlord wanted a new tenancy agreement signed. She said the Landlord increased the rent to \$1,500.00 per month in the new tenancy agreement. She referred to wanting to keep the Landlord happy in relation to signing the new tenancy agreement. Tenant L.C. said the Landlord never gave her a notice of rent increase.

Tenant L.C. could not remember if there was a prior written tenancy agreement in relation to this matter. She said she believed the tenancy was "a year at a time" when her mother lived at the rental unit.

Tenant L.C. testified that the Tenants received the Notice on November 6, 2018, posted to the door of the rental unit. Tenant L.C. confirmed the Tenants disputed the Notice November 7, 2018.

The teleconference started at 9:30 a.m. and ended at 9:56 a.m. Nobody appeared for the Landlord during this time.

### Analysis

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord had the onus to prove the Notice.

The Landlord did not appear at the hearing to provide evidence to prove the Notice. In the absence of evidence from the Landlord, the Notice has not been proven. Therefore, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

I am not satisfied that the rent increase provisions set out in Part 3 of the *Act* apply in the circumstances because a new tenancy agreement was signed in September of this year. I acknowledge that the new tenancy agreement states that it starts in 2015. This does seem to indicate that this is not a new tenancy agreement but a continuation of the previous tenancy agreement. However, Tenant L.C. testified that her mother previously lived in the rental unit and that, when her mother passed away, her daughter and daughter's child moved into the rental unit. The new tenancy agreement was then signed in September with the new rent amount. Given that the tenants named on the new tenancy agreement are different than the tenants previously residing in the rental unit, I find that this is a new tenancy agreement. Where parties enter into a new tenancy agreement, the rent increase provisions of the *Act* do not apply unless the tenancies are fixed term tenancies between the same parties for the same rental unit as explained at page four of Policy Guideline 30.

#### Conclusion

The Tenants' Application is granted in part. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

I do not find that there has been a rent increase imposed above the amount allowed by law. 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: December 19, 2018

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Residential Tenancy Branch