



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI, MNDCT, OLC, PSF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 24, 2019 and again on February 7, 2019 (the "Applications"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated January 19, 2019;
- an order to cancel a 10 Day Notice for unpaid rent or utilities dated February 2, 2019;
- a monetary order for money owed or compensation for damage or loss;
- to dispute a rent increase;
- an order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- an order to provide services or facilities required by the tenancy agreement or law.

The Tenant, the Landlord, the Landlord's Agent G.B., and the Landlord's Representative J.N. attended the hearing, each provided affirmed testimony.

The Tenant testified that she served the Landlord her Application package as well as documentary evidence by registered mail on January 28, 2019. The Tenant made another Application on February 7, 2019 to dispute another 10 Day Notice she had received. The Tenant testified that she served this Application via registered mail on February 7, 2019. The Landlord confirmed receipt of each mailing.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to sections 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### 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, 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 issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, and order that the Landlord comply with the *Act*, and an order to provide services or facilities required by the tenancy agreement or law are dismissed with leave to reapply.

#### Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated January 19, 2019 pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order cancelling the 10 Day Notice dated February 2, 2019 pursuant to Section 46 of the *Act*?

3. Is the Tenant entitled to dispute a rent increase pursuant to Section 41 of the *Act*?
4. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; that the tenancy began on October 1, 2017. Currently, rent in the amount of \$1,250.00 is due on the first day of each month. A security deposit in the amount of \$400.00 was paid to the Landlord. The Tenant submitted a copy of the tenancy agreement in support.

On behalf of the Landlord, J.N. testified that the Tenant failed to pay rent in the amount of \$1,250.00 when due in January 2019. J.N. stated that the Landlord subsequently served the Tenant with the 10 Day Notice dated January 19, 2019 with an effective vacancy date of February 2, 2019 by posting it to the Tenant's door. Neither party provided a copy of the 10 Day Notice dated January 19, 2019 in support.

J.N testified that the Tenant has also failed to pay rent for the month of February 2019 in the amount of \$1,250.00. J.N. stated that the Landlord subsequently served the Tenant with another 10 Day Notice dated February 2, 2019 with an effective vacancy date of February 2, 2019 by serving the Notice in person. The Tenant confirmed receipt. The Tenant submitted a copy of the 10 Day Notice dated February 2, 2019 in support.

In response, the Tenant testified that the parties had entered into a 6 month fixed term tenancy at the start of the tenancy. After completion of the original fixed term during which rent was in the amount of \$800.00, the parties entered into a new 6 month fixed term agreement on April 1, 2018 and agreed to the rent increasing to \$1,000.00 a month. Following the end of that fixed term tenancy, the Tenant testified that the parties once again entered into another 6 month fixed term agreement on December 4, 2018 at which point the rent increased to \$1,250.00. The Tenant stated that she signed the new agreement, agreeing to pay an increase of rent; however, is now under the impression that the Landlord did not raise the rent in accordance with the *Act*.

J.N. testified that the new agreements were created following the completion of fixed term agreements between the parties. J.N. stated that the increase of rent was in

relation to additional occupants residing in the rental unit and that the parties agreed and consented to the new agreements prior to them coming into effect.

### Analysis

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.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

In relation to the 10 Day Notice dated January 19, 2019, J.N. testified that the Landlord served the 10 Day Notice by posting it to the Tenant's door on January 19, 2019. J.N. testified that the Landlord served a second 10 Day Notice dated February 2, 2019 in person on the same day. The Tenant confirmed receipt of both notices. Therefore, pursuant to section 88 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The 10 Day Notices informed the Tenant that the 10 Day Notices would be cancelled if the rent was paid within five days. The Notice also explained that the Tenant had five days to dispute the Notices from the time the Tenant received them. The Tenant confirmed having received the notice on January 19, 2019 and again on February 2, 2019. I find that the Tenant disputed the 10 Day Notices within the appropriate timelines.

I find that the parties agreed that no rent has been paid since the notices have been served. While the Tenant testified that the Landlord has increased the rent in contradiction of the Act, I find that the parties agreed to enter into new fixed term tenancy agreements on two occasions after the completion of the previous fixed terms.

The Residential Tenancy Policy Guideline 30 (the "Policy Guidelines") states; a rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator.

In this case, I find that the parties agreed to the new terms of the tenancy and entered into a new fixed term tenancy on April 1, 2018 and again on December 4, 2018. While there is no evidence before me to indicate that the Landlord provided the Tenant with a notice of rent increase, I find that there was a discussions between the Landlord and Tenant regarding an increased number of occupants living in the rental unit which contributed to the parties agreeing to the Tenant paying and increased amount of rent. I find it is reasonable that the Landlord increased the rent for this reason and find that the Tenant agreed to these terms at the time of entering into a new fixed term agreement.

For these reasons, I dismiss the Tenant Application to dispute a rent increase without leave to reapply.

I further find that the Tenant has not paid rent in full to the Landlord for January and February 2019. Therefore, I dismiss the Tenant's Application to cancel the 10 Day Notice dated January 19 and February 2, 2019, without leave to reapply.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice dated February 2, 2019 complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order should be served to the Tenant as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply. The Tenant is still at liberty to reapply for the portions of their Application that were unrelated to the unpaid rent, which were set out above. The Landlord is granted an order of possession effective 2 days after service on the Tenant. The order should be served as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: March 19, 2019

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Residential Tenancy Branch