



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNR, MNDCT, PSF, LRE, LAT, RR, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- disputation of a rent increase from the landlord, pursuant to section 42; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord was served with the tenant's application for dispute resolution via registered mail. I find that the tenant's application for dispute resolution was served in accordance with section 89 of the *Act*.

### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the disputation of the rent increase, the 10 Day Notice to End Tenancy for unpaid rent and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy, disputation of the rent increase and recovery of the filing fee for this application.

#### Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to disputation of a rent increase from the landlord, pursuant to section 42 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2018 and is currently ongoing. The term of the tenancy agreement is from February 15, 2018 to February 15, 2021. A security deposit of \$850.00 and a pet damage deposit of

\$300.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenancy agreement states that rent for the subject rental property is \$1,700.00.

The landlord testified that at the time the tenancy agreement was signed the parties entered into a verbal agreement that the tenant would pay the landlord \$1,800.00 per month and the landlord would not increase the rent payable for the entire term of the tenancy agreement. The tenant denied entering into the above verbal agreement.

Both parties agree that the tenant never paid \$1,800.00 per month in rent.

The landlord testified that since the tenant did not fulfill his side of the verbal agreement he waited one year, as required by the *Act*, and then raised the rent from \$1,700.00 to \$1,850.00. The landlord testified that he provided the tenant with a written letter increasing the rent from \$1,700.00 to \$1,850.00 per month effective February 15, 2019 (the "notice of rent increase"). The landlord testified that he provided the notice of rent increase to the tenant approximately three months prior to the effective date; however, the landlord could not recall the date specifically.

The notice of rent increase reads as follows:

I have noticed that two other men other than you are living on this property...  
This property was rented to you along as per our Residential Tenancy Agreement signed by you. Therefore these two men are living on this property without my permission or prior agreement.

Also your rent will increase by \$150.00 per month from Feb 15, 2019.

The notice of rent increase is dated January 2, 2019. The tenant testified that he received the notice of rent increase on January 5, 2019. The tenant testified that he does not have two men living with him.

The landlord testified that on February 1, 2019 the tenant did not pay him any rent and on February 2, 2019 he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid rent (the "10 Day Notice"). The 10 Day Notice is dated February 2, 2019, states that the tenant failed to pay rent in the amount of \$1,850.00 that was due on February 1, 2019 and does not provide a date when the tenant must move out of the subject rental property. The landlord testified that he forgot to put the date the tenant

must move out of the subject rental property on the 10 Day Notice. The 10 Day Notice was entered into evidence.

The tenant testified that the witness personally provided the landlord with his rent cheque in the amount of \$1,700.00 on February 1, 2019. The witness testified that she could not specifically recall when she provided the rent cheque to the landlord but that it was usually provided to the landlord the day before it was due, so she probably provided it to the landlord on January 31, 2019.

The landlord testified that the tenant provided the rent cheque to him on February 4<sup>th</sup> or 5<sup>th</sup>, 2019 in the amount of \$1,700.00

### Analysis

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The testimony of the parties as to what the agreed rent was at the beginning of the tenancy is inconsistent. Where the landlord and the tenant disagree on the rental rate agreed upon at the start of the tenancy, I rely on the tenancy agreement as it was signed by both parties. As such, I find that rent was \$1,700.00 per month when the tenancy was entered into.

### Rent Increase

Sections 42 and 43 of the *Act* state:

**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.

**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.

Section 22(3) of the Residential Tenancy Branch Regulations (the "Regulations") states:

**22(3)** For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:  
percentage amount = inflation rate.

The highest allowable rent increase for 2019 is 2.5%. 2.5% of \$1,700.00 is \$42.50. The highest amount the landlord was entitled to increase the tenant's rent by was \$42.50.

The testimony of the landlord and the tenant differ as to when the landlord served the tenant with the notice of rent increase. The landlord claims to have served the notice of rent increase on the tenant three months prior to the effective date; however, the landlord has furnished no evidence to support this statement. I therefore find that the landlord has failed to prove, on a balance of probabilities, that he provided the tenant with at least three months' notice of the increase in rent.

I find that the rent increase is of no force or effect for the following reasons:

1. The landlord failed to prove that he gave the tenant at least three months notice of the proposed rent increase, contrary to section 42(2) of the *Act*;
2. The notice of rent increase was not in the approved form, contrary to section 42(3) of the *Act*; and
3. The rent increase was above the allowable rate established in section 22(3) of the Regulations.

I also note that no portion of the tenancy agreement allows the landlord to increase rent for additional occupants and the landlord failed to prove that additional occupants were living at the subject rental property.

I find that the current monthly rent is \$1,700.00.

#### 10 Day Notice

Section 46(1) of the *Act* states that 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.

Section 46(4) states that if within 5 days after receiving a notice under this section, the tenant pays the overdue rent, the notice has no effect.

I find that the landlord failed to prove that the tenant paid February 2019's rent late and that in any event the rent was paid within five days of the tenant's receipt of the 10 Day Notice and is therefore of no force or effect.

I also note that the 10 Day Notice did not state the effective date of the notice, contrary to section 52(c) of the *Act*, and is therefore ineffective.

For the above reasons I find that the 10 Day Notice is of no force or effect and is cancelled.

As the tenant was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Section 72(2) states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

### Conclusion

The 10 Day Notice is cancelled and of no force or effect.

Pursuant to section 72(2) of the *Act*, the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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 18, 2019

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Residential Tenancy Branch