



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR

### Introduction

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

- An order of possession pursuant to section 55; and
- A monetary award for damages and loss pursuant to section 67.

There was an original decision dated August 30, 2019 wherein the landlord was granted an Order of Possession and their monetary application was dismissed with leave to reapply. The tenant subsequently applied for a review consideration of that decision and the original decision was suspended.

The tenant did not attend this hearing which lasted approximately 10 minutes. The landlord attended was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave evidence that they served the tenant with the application for dispute resolution and evidence by registered mail sent on August 24, 2019. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served in accordance with sections 88, 89 and 90 of the *Act* on August 29, 2019, five days after mailing.

### Issue(s) to be Decided

Should the original decision be varied, affirmed or set aside?

### Background and Evidence

At the outset of the hearing the landlord said that the tenant has abandoned the rental unit and an order of possession was no longer being sought. They withdrew the portion of their application seeking an Order of Possession.

The landlord testified that they served a 10 Day Notice to End Tenancy for Unpaid Rent dated August 2, 2019 by placing it in the tenant's mailbox in the presence of a witness on that same date. The 10 Day Notice indicates that there is an arrear of \$421.00.

The landlord submits that monthly rent for this tenancy was \$1,321.00 payable on the first of each month. The landlord gave evidence that rent was raised by two Notices of Rent Increase. The first issued on February 1, 2017 provides an effective date of May 1, 2017. The second issued on February 1, 2018 provides an effective date of May 1, 2018.

The landlord submits that the tenant did not pay the full amount of the rent and there is a total arrear of \$421.00 as at the date of the hearing.

### Analysis

The landlord withdrew the portion of their application seeking an Order of Possession.

Section 42 (2) of the *Act* provides that a landlord "must give a tenant notice of a rent increase at least 3 months before the effective date of the increase" The Notice of Rent Increase form provides the following information regarding rent increases:

*"For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1<sup>st</sup>, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1<sup>st</sup>."*

I find that the landlord issued the 2017 Notice of Rent Increase on February 1, 2017 with an effective date of May 1, 2017; however, I find that three whole months would mean the earliest the rent could have been increased was June 1, 2017. Therefore, I find the landlord has not provided the full three months required for the 2017 rent increase and the Notice of Rent Increase was of no force or effect.

I also find that the landlord issued the 2018 Notice of Rent Increase on February 1, 2018 with an effective date of May 1, 2018. I find that three whole months would mean the earliest the rent could have been increased was June 1, 2018. Therefore, I find the landlord has not provided the full three months required for the 2018 rent increase and this Notice was of no force or effect.

I find, based on the evidence that the rent was not increased and therefore the tenant was under no obligation to pay the increased amount of \$1,321.00, which the landlord submits was the rent amount. As such, I find that the landlord has not established that there is an arrear for this tenancy.

Accordingly, I dismiss this portion of the landlord's application.

### Conclusion

I find it appropriate to replace the original decision of August 30, 2019 with the following:

The portion of the application seeking an Order of Possession is withdrawn and dismissed without leave to reapply.

The portion of the landlord's application seeking a monetary award is dismissed without leave to reapply.

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 5, 2019

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Residential Tenancy Branch