



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 1, 2019. Rent is stated on the tenancy agreement to be \$498.00 payable on the first day of each month from the start of the tenancy with a rental increase to \$598.00 commencing September 1, 2019. On August 21, 2019 the Parties signed a second tenancy agreement with rent stated to be \$598.00 payable on the first day of each month. On December 1, 2019 the Landlord received \$498.00 for the rent and on December 17, 2019 the Landlord served the Tenant with a 10 day notice to end tenancy

for unpaid rent (the "Notice"). The Notice sets out that rent of \$598.00 due December 1, 2019 was unpaid. On January 1, 2020 the Landlord received rent and a utility payment of \$334.50 for January 2020 rent with a note that the Tenant deducted \$300.00 for the rental overpayments for September, October and November 2019. The Tenant paid \$498.00 for February 2020 rent.

The Tenant states that while it believed the rental increase in the first tenancy agreement was not legal, the Tenant was pressured into signing the second tenancy agreement with the increased rent of \$598.00. The Landlord states that the Tenant was given a rental discount for the original tenancy agreement until the actual rent of \$598.00 was payable as of September 1, 2019.

The Tenant states that the first tenancy agreement indicates that the tenancy would end August 31, 2020 due to the Tenant's preference. The Tenant states that it never indicated that it wanted a required move-out date and that the Landlord inserted this without the Tenant's agreement. It is noted that the second tenancy agreement requires the Tenant to move out of the unit at the end of the fixed term without any reasons stated on the tenancy agreement for that required move-out.

### Analysis

Section 42(1)(a) of the Act provides that a landlord must not impose a rent increase for at least 12 months after, 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. Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. Based on the undisputed evidence that the tenancy started on March 1, 2019 with rent of \$498.00 I find that the Landlord could not increase that rental amount for at least 12 months after the tenancy start date. As such the first tenancy agreement provision for a rent increase prior to the 12 months is not effective for a rental increase to \$598.00. As the second tenancy agreement increases the rent to \$598.00 prior to

the 12 months from March 1, 2019 I also find that this tenancy agreement is an attempt to avoid the rent increase provisions of the Act that restricts increases prior to 12 months from March 1, 2019. As such I find this tenancy agreement in relation to the rental amount is of no effect and the original rental amount of \$498.00 remains effective.

Section 43(5) of the Act provides that 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 46(1) of the Act provides 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. Based on the undisputed evidence that the Tenant paid the effective rental amount of \$498.00 for December 2019 I find that the Landlord has not substantiated that the Tenant failed to pay rent as required under the tenancy agreement for December 2019. As a result, I find that the Notice is not valid and is cancelled. The tenancy continues.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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. As the Landlord collected a rental increase of \$100.00 for each of September, October and November 2019 that did not comply with the Act I find that the Tenant was entitled under the Act to deduct \$300.00 from January 2020 rent.

Section 44(1)(b) of the Act provides that a tenancy end if the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term, Section 97(2)(a.1) of the Act provides that regulations may be made prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term. Section 13.1(2) of the Regulations provides that the circumstances in which a landlord may include in a

fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

- (a) the landlord is an individual, and
- (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

Based on the undisputed evidence that neither the original or the second tenancy agreement requires the Tenant to vacate the unit at the end of the fixed term for the landlord to occupy the unit I find that neither tenancy agreement may be relied upon to require the Tenant to move out of the unit at the end of the fixed term.

As the Tenant has been successful with its claim to cancel the Notice, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

### Conclusion

The Notice is cancelled, and the tenancy continues. I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: February 25, 2020

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Residential Tenancy Branch