



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, OLC, CNR, RP (Tenant)  
                             OPR-DR, FFL, OPRM-DR (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the application February 01, 2020 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a rent increase that is above the amount allowed by law;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”); and
- For repairs to be made to the unit or property.

The Landlord filed the application February 17, 2020 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the Notice;
- To recover unpaid rent; and
- For reimbursement for the filing fee.

The Landlord’s Application was originally dealt with through the direct request process and was adjourned to a participatory hearing.

The Tenant appeared at the hearing with her son to assist. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The Tenant and Landlord provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told the Tenant at the outset that I would consider the dispute of a rent increase and dispute of the Notice. I told the Tenant the remaining issues would be dismissed with leave to re-apply as they are not sufficiently related to the disputes of the rent increase and Notice. The remaining issues are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Has the rent been increased above the amount allowed by law?
2. Should the Notice be cancelled?
3. Is the Landlord entitled to an Order of Possession based on the Notice?
4. Is the Landlord entitled to recover unpaid rent?
5. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence. Rent is \$650.00 per month due on the first day of each month. It is a month-to-month tenancy.

The parties agreed the tenancy started August 01, 2012.

The Tenant sought to dispute a rent increase. She explained that rent was \$650.00 but she agreed to pay \$800.00 per month in March of 2019 because there was outstanding rent owing to the Landlord. The Tenant testified that her understanding was rent would go back to being \$650.00 once the outstanding rent was paid. The Tenant testified that the Landlords told her rent would stay at \$800.00. The Tenant testified that she was never served with an RTB Notice of Rent Increase.

The Landlord agreed the Tenant has never been served with an RTB Notice of Rent Increase and agreed rent is \$650.00 per month.

The Notice states the Tenant failed to pay \$1,800.00 in rent due December 01, 2019. It includes a breakdown showing \$200.00 owing for November, \$800.00 owing for December and \$800.00 owing for January. It also shows \$407.01 in utilities outstanding. It is addressed to the Tenant and refers to the rental unit. It is signed by the Landlord but not dated. It has an effective date of February 06, 2020.

The Landlord said there was no written demand given to the Tenant for the outstanding utilities.

The parties agreed the Notice was personally served on the Tenant January 27, 2020.

The Landlord confirmed the Tenant failed to pay \$200.00 of November rent, \$800.00 of December rent and \$800.00 of January rent. The Landlord testified that these numbers reflect the outstanding rent the Tenant was paying over and above the usual rent amount.

The Landlord testified that there is no rent currently outstanding as the Tenant paid the following:

- December rent on March 09, 2020
- January rent on March 25, 2020
- February rent on March 26, 2020
- March rent on April 03, 2020
- April rent on April 06, 2020

The Landlord testified that \$443.05 in utilities is outstanding for a bill for the period from December to February which was emailed to the Tenant March 09, 2020.

The Tenant acknowledged \$100.00 in rent was outstanding in November and that she did not pay rent in December, January or February. The Tenant testified that the next rent payment was made March 08, 2020.

The Tenant testified that she withheld rent because the Landlord was saying rent was \$800.00. The Tenant also said there were repairs needed that were long overdue.

In relation to the outstanding utilities, the Tenant testified that she just has not had a chance to pay the bill yet. She agreed to do so by the end of the month. I told the parties I would include this in the decision as an agreement between the two that the

Tenant will pay the Landlord for utilities by May 01, 2020, which is the date the Landlord gave. I told the parties I would issue a Monetary Order for this amount.

The Landlord sought an Order of Possession effective May 01, 2020.

### Analysis

#### ***Rent Increase***

The Landlord agreed rent is \$650.00 per month. This is what the Tenant is required to pay each month. I do not find it necessary to go into this issue further given the Landlord's acknowledgement that rent remains at \$650.00 per month.

#### ***Utilities***

The parties agreed the Tenant owes the Landlord \$443.05 for utilities. The parties agreed this would be paid by May 01, 2020. The Tenant is therefore to pay the Landlord \$443.05 by May 01, 2020. The Landlord is issued a Monetary Order for this amount.

#### ***10 Day Notice***

Section 26(1) of the *Act* states:

26 (1) 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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) 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.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I am satisfied based on the written tenancy agreement and agreement of the parties that rent is \$650.00 per month due on the first day of each month.

The Tenant testified that she withheld rent for November to February because the Landlord was saying rent was going to stay at \$800.00. The Tenant also brought up needed repairs.

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);

5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

Section 43(5) of the *Act* states:

(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.

(emphasis added)

Here, the Tenant took issue with a rent increase from \$650.00 to \$800.00. In these circumstances, the Tenant may have been entitled to withhold \$150.00 from rent; however, the Tenant was not entitled to stop paying rent altogether because of the increase. This is not permitted by the *Act*.

The Tenant was not entitled to withhold rent because the rental unit needed repairs. The only related section is section 33 of the *Act* in relation to emergency repairs which only applies to limited issues and requires the Tenant to have taken a number of steps before deducting from rent. There is insufficient evidence before me that section 33 of the *Act* applied here.

I find the Tenant did not have authority under the *Act* to withhold rent for November to February.

The Tenant acknowledged \$100.00 in rent was outstanding in November and that she did not pay rent in December or January. I am satisfied rent was outstanding on January 27, 2020 when the Notice was served on the Tenant. Given the Tenant had not paid rent as required, the Landlord was entitled to serve her with the Notice.

There is no issue that the Notice was personally served on the Tenant January 27, 2020 as the parties agreed on this. The Notice was served in accordance with section 88(a) of the *Act*.

The Tenant had five days from receipt of the Notice on January 27, 2020 to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

The parties disagreed about what rent amount was outstanding. However, the Tenant acknowledged \$100.00 was outstanding for November and no rent was paid for

December or January. Therefore, I find at least \$1,400.00 in rent was outstanding when the Tenant received the Notice.

Both parties agreed the next rent payment was made in March, the Landlord testifying it was made March 09, 2020 and the Tenant testifying it was made March 08, 2020. Regardless, the Tenant had until February 01, 2020 to pay the outstanding rent, which was at least \$1,400.00. The Tenant did not pay this amount by February 01, 2020.

The Tenant also had until February 01, 2020 to dispute the Notice and did so. However, the Tenant disputed the Notice due to the rent increase and repairs. As explained, neither of these issues permitted the Tenant to withhold \$100.00 of rent for November and all of rent for December and January. Therefore, the Tenant did not have a valid basis to dispute the Notice. The dispute is dismissed without leave to re-apply.

I have reviewed the Notice. I have not accepted that \$1,800.00 was outstanding when the Notice was issued. However, I have accepted that at least \$1,400.00 was outstanding. I do not find the \$1,800.00 noted on the Notice invalidates it as the Tenant would have known how much was outstanding and it was open to the Tenant to pay the outstanding amount. The Tenant did not do so. I also note that the amount is for November to January yet the Notice states it was due December 01, 2019. Again, I find the Tenant would have known from the notations to the right of the rent section what the Landlord was relying on for unpaid rent.

I acknowledge that the Notice is not dated. This is a requirement of section 52 of the *Act*. However, section 68 of the *Act* states:

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

I amend the Notice to include a date. The Tenant would have known the date of the Notice as it was served on her personally. A date is also noted in the box below the

“date signed” box. I find it appropriate to amend the Notice to include the date in the circumstances.

Upon a review of the Notice, and considering the amendment, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

I have found the Notice complies with section 52 of the *Act*. I have also dismissed the Tenant’s dispute of the Notice. Therefore, pursuant to section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession based on the Notice. I issue the Landlord an Order of Possession effective at 1:00 p.m. on May 01, 2020.

The outstanding utilities has been dealt with above. The parties agreed there is no outstanding rent at this time. Therefore, the request to recover unpaid rent is dismissed without leave to re-apply.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. This is included in the Monetary Order for the outstanding utilities. Pursuant to section 67 of the *Act*, the Landlord is issued a Monetary Order for \$543.05.

### Conclusion

The Tenant’s dispute of the Notice is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession effective at 1:00 p.m. on May 01, 2020. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court  
**SUBJECT TO THE MINISTERIAL ORDER M089 REFERENCED ON THE LAST PAGE OF THIS DECISION.**

The Landlord is issued a Monetary Order for \$543.05. If the Tenant fails to pay the Landlord for utilities by May 01, 2020, or if the Tenant fails to reimburse the Landlord for the filing fee, this Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: April 06, 2020

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Residential Tenancy Branch