



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal Canadian Legion Br 237 and [tenant  
name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, CNR, OLC, RR, CNL-4M

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 8, 2020 (the "Application"). 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 September 5, 2020;
- an order that the Landlord comply with the Act;
- an order granting a rent reduction; and
- an order to cancel a Four Month Notice to End Tenancy.

The Tenant and the Landlord's Agent V.K. attended the hearing at the appointed date and time. At the start of the hearing the parties confirmed service and receipt of their respective Application and documentary evidence package. There were no issues relating the service, therefore, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 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 *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 is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated September 5, 2020, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order granting a rent reduction, pursuant to
3. Is the Tenant entitled to an order that the Landlord comply with the *Act*, pursuant to Section
4. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
5. 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 Tenant stated that his tenancy began on June 15, 2015. The Tenant stated that rent at the start of the tenancy was \$450.00 but that in 2019 the Landlord illegally raised the rent to \$500.00. The Landlord's Agent stated that she has no evidence that the previous property manager provided the Tenant with a Notice of Rent Increase for the increase that took effect on March 1, 2019.

The Tenant stated that he has completed many repairs to the rental unit throughout the years and that the parties came to a mutual verbal agreement that the Tenant would only be required to pay rent in the amount of \$250.00 to the Landlord each month until the end of the tenancy. The Landlord's Agent denied this claim and stated that the Landlord agreed to compensate the Tenant up to \$2,000.00, therefore, the Tenant was not required to pay rent in March and April 2020 and was only required to pay rent in the amount of \$250.00 instead of \$500.00 in May, June, July and August 2020. The Landlord's Agent stated that this temporary rent reduction sufficiently compensated the Tenant his expenses on repairs he made to the rental unit.

The Landlord's Agent stated that the rent was meant to resume to \$500.00 on September 1, 2020, however, the Tenant failed to pay rent on September 1, 2020. As such, the parties agreed that the Landlord served the Tenant with a 10 Day Notice dated September 5, 2020, which was served to the Tenant in person on September 5, 2020. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$500.00 which was due on September 1, 2020. The Landlord's Agent stated that the 10 Day Notice has an effective date of September 18, 2020.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenant had five days to dispute the Notice. The Tenant was unsure when he received the 10 Day Notice, however applied to cancel the 10 Day Notice within the appropriate timelines.

The Landlord's Agent stated that the Tenant paid \$250.00 to the Landlord on September 8, 2020 and paid a further \$250.00 to the Landlord on October 1, 2020. The

Tenant confirmed that he only paid rent in the amount of \$250.00 in September and October, however, the Tenant stated that this is the amount of rent that is owed to the Landlord each month based on their verbal agreement. Neither party provided evidence in support of the agreement made.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

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.

Section 43 of the *Act* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the tenant in writing.

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

**Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.**

In this case, the parties agreed that the Landlord raised the rent from \$450.00 to \$500.00 on March 1, 2019 and that the Landlord did not serve the Tenant an official Notice of Rent Increase. I find that the rent increase was not in the approved form. Furthermore, I find that the rent increase was higher than the 2.5% legal limit in 2019. I find that the Tenant is only legally required to pay rent to the Landlord in the amount of \$450.00 on the first day of each month until such a time that the Landlord increased the Tenant's rent in accordance with the Act.

As such, I find that the Landlord was not permitted to increase the rent to \$500.00. I find that the Tenant has overpaid his rent by \$50.00 each month, from March 2019 until February 2020. I find that the Tenant is entitled to the recovery of \$600.00 in relation to the over payment of rent ( $\$50.00 \times 12 \text{ months} = \$600.00$ ).

I accept that the parties had a verbal agreement in which the Landlord was to compensate the Tenant in the amount of \$2,000.00 for expenses related to repairs to the rental unit which was performed by the Tenant. I accept that the Landlord allowed the Tenant to not pay rent for the month of March and April 2020, which after considering the amount of legal rent the Tenant is required to pay, amounts to \$900.00.

I accept that the Tenant paid \$250.00 to the Landlord for May, June, July, August, September and October 2020. While the amount of legal rent for these months amounts to \$2,700.00, the Tenant paid \$1,500.00, which compensated the Tenant a further \$1,200.00.

In summary, I find the that Tenant has over paid rent in the amount of \$600.00. I accept that the Landlord agreed to compensate the Tenant \$2,000.00. Combining these amounts, the Tenant is entitled to compensation in the amount of \$2,600.00 from the Landlord. The Landlord has provided the Tenant with two free months of rent equivalent to \$900.00. The Tenant has paid the Landlord \$250.00 in rent from May to October 2020, which provided the Tenant with a further \$1,200.00 in compensation based on the legal rent amount. As such, I find that the Tenant is entitled to a further **\$1,400.00**.

Section 26 of the Act states that a Tenants 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.

In this case, I find that the Tenant has the right to deduct the amount of unpaid rent that the Landlord indicated on the 10 Day Notice. As such, I cancel the 10 Day Notice dated September 5, 2020. I order that the Tenancy continues until it is ended in accordance

with the *Act*. Since the Tenant was successful with his Application, I find that he is entitled to the return of the **\$100.00** filing fee paid to make the Application.

I order that the Tenant may deduct \$1,500.00 from future rent payments to the Landlord.

### Conclusion

The Landlord breached Section 42 of the *Act*. I order that the Tenant is required to pay rent in the amount of \$450.00 to the Landlord on the first day of each month.

The 10 Day Notice dated September 5, 2020 is cancelled. I order that the tenancy continue until it is ended in accordance with the *Act*.

The Tenant is permitted to deduct \$1,500.00 from future rent payments 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: November 3, 2020

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Residential Tenancy Branch