



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. For a monetary order for unpaid rent.

The tenant's application is seeking an order as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on March 26, 2021.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issue(s) to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy agreement was signed on February 3, 2018. Rent in the amount of \$1,250.00 was payable on the first of each month.

The parties agreed that the tenant received a Notice of Rent Increase, that increase the rent from \$1,250.00 to \$1,281.00. The tenant stated that they started to pay the rent increase on March 1, 2019, not on February 1, 2019 because that was earlier than the Act allowed as they did not move-in to the premise until February 3, 2018 and that is when the tenancy agreement was signed and they paid the rent and security deposit.

The landlord's agent responded that the tenancy agreement shows that it started on February 1, 2018; however, acknowledge the tenancy agreement was signed on February 3, 2018.

The landlord's agent testified that they issued a second Notice of Rent Increase on October 17, 2019, which was to take effect on February 1, 2020. Rent would increase to the amount of \$1,314.00. The agents stated that this was sent to the tenant by regular mail.

The agent testified that the tenant has never paid the increase of rent and that is why they issued the Notice. The agent stated they have tried to contact the tenant by email, text, and telephone; however, they were unable to get any response from the tenant. The landlord's agent testified as they could not resolve the unpaid rent they issued the Notice.

The tenant testified that their rent has always been paid in full and on time. The tenant stated that they did not receive the second Notice of Rent Increase. The tenant stated that the first time they saw the second Notice of Rent Increase, was when they received the landlord's evidence.

The landlord's agent argued that the tenant is simply being selective of what documents they acknowledged received. The agent stated that the tenant has always responded to them when they have been issued documents, such as the previous Notice of Rent Increase or when they were served with a prior notice to end the tenancy.

The tenant responded that they do not have a telephone and they do not text message. The tenant stated that they do not have internet and since the libraries were closed they did not have access to a computer to read emails. The tenant stated that the landlord

could have sent them a letter in regard to the rent increase to see if it was received. The tenant stated that it is unreasonable that the landlord is trying to end their tenancy over a year later.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The evidence of landlord's agent was that the Notice of Rent Increase was sent to the tenant on October 17, 2019, by regular mail. The evidence of the tenant was that they did not receive the Notice of Rent Increase.

While I accept when a document is sent by regular mail, it is deemed to have been served five days after it was mailed. However, the deemed service provision under the Act, is rebuttable.

In this case, I am not satisfied that the tenant was served with the Notice of Rent Increase. There is no proof that it was actually sent, such as a Canada Post tracking number, or even a photograph of the envelope which would show the date. Further, there could have been an error with Canada post.

The tenant continued to pay the rent in accordance with the first Notice of Rent Increase. I find it would have been reasonable for the landlord to at the very least send the tenant a letter confirming it was received or posting such a letter to the door. The landlord did not do either.

The evidence of both parties was that the tenant always responded to documents they have received, such as the prior Notice of Rent Increase or other documents related to the tenancy. I reject the landlord's agent argument that the tenant is being selective, this is the only written document the tenant has not acknowledged.

Based on the above, I cannot find the Notice of Rent Increase was served on the tenant. Having made the above finding, I find I must cancel the Notice. The tenancy will continue, and rent will remain at \$1,281.00. The landlord is entitled to issue a new Notice of Rent Increase when the restriction on rent increases are lifted. The landlord's application for an order of possession and a monetary order is dismissed.

### Conclusion

The tenant's application to cancel the Notice is granted. The landlord's application for an order of possession and a monetary order is dismissed.

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 Tenancy Act*.

Dated: July 16, 2021

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Residential Tenancy Branch