



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, LAT, FFT

### Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 9, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the Act;
- (ii) authorisation to change the locks to the rental unit under section 31 of the Act; and
- (iii) authorisation to recover the cost of the filing fee under section 72 of the Act.

### Issues

- 1. Is the tenant entitled to an order cancelling the Notice?
- 2. If not, is the landlord entitled to an order of possession?
- 3. Is the tenant entitled to change the locks to the rental unit?
- 4. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began August 1, 2018. The landlord currently retains a \$1,222.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 7, 2023, by posting a copy to the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the

amount of \$2,480.00 that was due on April 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant is currently \$540.00 in rental arrears, representing unpaid rent from February 2022 to May 2023.
- the rent had been increased from \$2,444.00 to \$2,480.00 effective February 1, 2022. The landlord submitted as evidence a notice of rent increase sent to the tenant via email (to a Hotmail address) on October 31, 2021.
- the tenant had continued paying the previous rate of \$2,444.00 rather than the increased rate of \$2,480.00, leaving a shortfall of \$36.00 per month for a total of 15 months.

The tenant affirmed that:

- the tenant has been paying the rent of \$2,444.00 every month, which is what the tenant understands the rent to be.
- the tenant did not receive the notice of rent increase sent to the tenant via email (to a Hotmail address) on October 31, 2021, as it was sent to an old email address, which the tenant no longer uses.
- the tenant had informed the landlord on September 3, 2019, via text message that the tenant has stopped using the Hotmail address and asked the landlord to contact the tenant at the tenant's new Gmail address instead. The tenant submitted as evidence a text message sent by the tenant to the landlord on September 3, 2019, reflecting this exchange.
- the tenant had changed the locks to the rental unit without seeking permission from the landlord or the Residential Tenancy Branch.

### Analysis

Under section 42 of the Act, in order for a rent increase to be valid, a landlord must give a tenant a notice of a rent increase at least 3 months before the effective date of the increase.

Under section 43 of the Residential Tenancy Regulation, documents may be given to or served on a person by emailing a copy to an email address provided as an address for service by that person.

The landlord's evidence is that the landlord had sent the notice of rent increase on October 31, 2021, to the tenant's Hotmail address. The tenant's evidence is that the

tenant did not receive the notice of rent increase as the Hotmail address was an old email address, which the tenant no longer uses. The tenant submitted as evidence a text message sent to the landlord on September 3, 2019, stating that the tenant has stopped using the Hotmail address and asked the landlord to contact the tenant at the new Gmail address instead.

As the tenant had informed the landlord on September 3, 2019, that the tenant has stopped using the Hotmail address, and the landlord sent the notice of rent increase on October 31, 2021, to the tenant's Hotmail address, I find that the landlord already knew the tenant no longer used the Hotmail address when the landlord sent the notice of rent increase to that address. Therefore, I find that the landlord did not serve the tenant by emailing a copy to an email address provided as an address for service by the tenant. Accordingly, I find that the tenant was not served with the required notice of rent increase and that the rent increase from \$2,444.00 to \$2,480.00 is invalid. Consequently, I find that the rent is currently \$2,444.00.

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

As the landlord's and tenant's evidence is that the tenant has been paying the old rent of \$2,444.00 throughout the relevant period, I find that the tenant does not have any rental arrears currently. As a result, I find that the Notice was not given for a valid reason and the tenant's application to cancel the Notice is granted. The tenancy shall continue until it is ended in accordance with the Act.

Under section 31 of the Act, a tenant must not change a lock or other means that gives access to the rental unit unless the landlord agrees in writing to, or the Residential Tenancy Branch has ordered, the change. As the tenant affirmed that the tenant had changed the locks to the rental unit without seeking permission from the landlord or the Residential Tenancy Branch, I find that the tenant did not have authorisation to change the locks. Therefore, the tenant is ordered to provide the landlord with a set of keys that gives access to the rental unit at the tenant's own cost within 5 days of receiving this Decision.

Since the tenant was successful in its application to cancel the Notice, the tenant's application to recover the cost of the filing fee under section 72 of the Act is granted.

Pursuant to section 72 of the Act, the tenant is ordered to withhold \$100.00 in rent for recovery of the filing fee.

Conclusion

The tenant's application to cancel the Notice is granted.

The tenant's application to change the locks to the rental unit 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: June 16, 2023

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Residential Tenancy Branch