Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNR-MT, MNDCT, FFT / OPR-DR

Introduction

The hearing was convened following Applications for Dispute Resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant requests the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the Act;
- A monetary order for compensation for damage or loss under the Act, the *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 67 of the Act; and
- To recover the cost of the filing fee from the Landlord under section 72(1) of the Act.

The Landlord requests the following:

- An Order of Possession based on the Notice under section 55(2)(b) of the Act.

The Landlord called into this teleconference at the date and time set for the hearing of this matter. The Tenant joined after approximately 25 minutes of hearing time had elapsed.

Service of Notice of Dispute Resolution Proceedings and Evidence

The Tenant affirmed they served the Notice of Dispute Resolution Proceeding Package (the Materials) for their Application to the Landlord via email on July 9, 2025. No record

of the outgoing email purportedly containing the Materials was provided by the Tenant, nor was there a completed *Proof of Service* form. The Landlord denied receiving the Materials and affirmed they only became aware of the Tenant's Application through automated emails from the Residential Tenancy Branch (the Branch), and that they were unaware of what the Tenant was seeking in their Application.

Rule 3.5 of the *Rules of Procedure* (the Rules) states that during the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Materials and all evidence as required by the Act and the Rules. If the applicant cannot demonstrate that each respondent was served as required, the arbitrator may adjourn the application or dismiss it with or without leave to reapply.

The date the Tenant indicated they served the Materials to the Landlord was before Branch provided them. No written evidence was provided to support the notion the Materials were served and the Landlord denied receiving them. Given this, I find the Tenant has failed to establish the Materials for their Application were served as required. I dismiss the Tenant's claim under section 67 with leave to reapply. Leave to reapply is not an extension of any applicable timeline. I dismiss the Tenant's request to cancel the Notice and to recover the cost of the filing fee without leave to reapply.

The Landlord testified they served the Materials and their evidence to the Tenant via email on July 18, 2025. The parties have a written agreement to serve one another via email on the Branch form # 51, *Address for Service*, a copy of which was provided by the Landlord. The Landlord also provided a record of the emails being sent to the Tenant.

Based on the above, I find the Materials and Landlord's evidence were sufficiently served to the Tenant in accordance with sections 88(j) and 89(1)(f) of the Act and sections 43(1) and (2) of the Regulation, and were deemed received on July 21, the third day after sending, per section 44 of the Regulation.

Preliminary Issue – Amendment

The Tenant listed themselves as a respondent in their Application. For clarity, I therefore amended the Tenant's Application to list the Landlord. I also removed MC as a party to both Applications. The reasons for this will be explained in the *Analysis* section of this Decision.

Issue to be Decided

- Is this tenancy ended under the Notice?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Evidence was provided that indicates the tenancy began on October 17, 2020 with monthly rent of $2,200.00 due on the first day of the month. A written tenancy agreement was signed by the Landlord, the Tenant, and another tenant, FJ. The Landlord affirmed they never had any contact with FJ, who also never occupied the rental unit or paid rent.

A second written tenancy agreement was prepared listing the Tenant and MC as co-tenants with a start date of February 1, 2021. It was undisputed that MC never signed the agreement and never paid rent to the Landlord. It was also undisputed that only MC continues to occupy the rental unit as the Tenant vacated in May 2025. The Tenant indicated they are a carer for MC, who has hearing and sight impairments.

A copy of the Notice was entered into evidence. The Notice is on the approved form, is signed by the Landlord and dated July 1, 2025 and provides an effective date of July 14. The reason for ending the tenancy, per the Notice is the Tenant has failed to pay rent of $2,300.00 due on June 1.

The Landlord affirmed as follows. In November 2022 they emailed the Tenant and informed them rent would increase from $2,200.00 to $2,300.00 from January 1, 2023 due to rising costs. The Tenant verbally agreed to this. The Landlord acknowledged that they now understand there is a different procedure to follow to put a rent increase into effect. A copy of the November 1, 2022 email was submitted as evidence by the Landlord.

The Tenant paid the monthly rent of $2,300.00 from January 2023 to May 2025 with no issues. The rent for June went unpaid, however. The Landlord corresponded with the Tenant about this, and the Tenant indicated that they had vacated the rental unit in May,

that rent was not their responsibility anymore, and that MC would be paying going forward.

The Landlord discussed the issue with MC, who indicated their social workers would be able to assist. When approached, MC's social workers said they could not pay rent on MC's behalf. Because of this, the Notice was issued to the Tenant to the email address they provided for service. A copy of the email containing the Notice was submitted as evidence by the Landlord.

The Tenant did not dispute the rent payment history put forward by the Landlord. They also said they agreed verbally to the $100.00 increase in 2023.

The Tenant also did not dispute they vacated the rental unit in May 2025 and that MC had never signed any agreement to become a tenant under the tenancy.

Analysis

Rule 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In their Application, the Landlord seeks an Order of Possession based on the Notice, which was issued for unpaid rent.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

The Act sets out limited circumstances where a tenant can make deductions from rent, which includes when a landlord collects a rent increase that does not comply with Part 3 of the Act, as set out in section 43(5) of the Act.

Part 3, section 41 of the Act, states that a landlord must not increase rent except in accordance with sections 42 and 43 of the Act. Section 42 of the Act only allows for a rent increase at least 12 months after the effective date of the last rent increase, which must also be served in the approved form and at least 3 months before the effective date of the increase.

Section 43 of the Act sets out that a landlord may only impose a rent increase by an amount calculated in accordance with the *Residential Tenancy Regulation* (the Regulation), for an amount agreed to by the tenant in writing, or as ordered by an arbitrator.

As set out in Policy Guideline 37B - *Agreed Rent Increase*, A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must:

- Be in writing;
- Clearly set out the rent increase (for example, the percentage increase and the amount in dollars);
- Clearly set out any conditions for agreeing to the rent increase;
- Be signed by the tenant; and
- Include the date that the agreement was signed by the tenant.

It was undisputed that the Landlord imposed a rent increase effective January 1, 2023 through an email dated November 1, 2022 which took rent from $2,200.00 to $2,300.00.

Given the above, I find the Landlord's rent increase they imposed was in contravention of the Act for the following reasons:

- The approved form was not used;
- The amount of the rent increase exceeded the amount permitted under the Regulation, which was 2% for 2023 which translates to an increase of $44.00;
- The Tenant did not agree to the increase above the permitted amount in writing; and
- Three months' notice was not given.

Whilst it was also undisputed that the Tenant verbally agreed to the increase, I find this does not make the increase as a whole compliant with the Act. As noted above, Policy Guideline 37 sets out a rent increase over the amount permitted by the Regulation should set out the terms and the percentage. I find this is reasonable, keeping in mind the protective purpose of the Act. Whilst agreeing to an increase may be present, I find it is also reasonable for a tenant to be informed that the agreement may be withheld or that they are agreeing to an increase they do not necessarily have to. It was not clear to

me that the Tenant knew the increase was over the amount permitted, and that they were within their rights to dispute the rent increase.

Based on the above, I find the $100.00 rent increase which the Tenant paid from January 2023 to May 2025 – a period of 29 months – was in breach of part 3 of the Act and I order the increase of no force or effect. Rent will remain at $2,200.00 per month until increased in accordance with the Act. Given this, the Tenant was entitled to withhold a total of $2,900.00 from rent which is over the amount set out on the Notice. Therefore the Landlord did not have a valid reason to issue the Notice on July 1, 2025 since the Tenant was within their rights to withhold the amount they did at that point.

Since I find the Landlord has failed to establish that they had sufficient reason to issue the Notice under section 46(1) of the Act, I dismiss their Application without leave to reapply. I order the 10 Day Notice to End Tenancy for Unpaid Rent dated July 1, 2025 cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

For clarity, I underscore that rent remains $2,200.00 per month until increased in compliance with Part 3 the Act. The Tenant is entitled to withhold a total of $2,900.00 for the overpayments associated with the non-compliant rent increase under section 43(5) of the Act. If the Tenant deducts more than this amount without a valid reason to do so, the Landlord is at liberty to issue a further notice for unpaid rent under section 46 of the Act.

Since section 26 of the Act sets out that it is a tenant that must pay rent when it is due, I find I must also set out my finding that MC is not a tenant under this agreement. The evidence before me clearly indicates that MC was not listed as a tenant under the first written agreement, and was an occupant only. Occupants are not obligated to pay rent.

Whilst the second tenancy agreement lists MC as a tenant, it was undisputed that they did not sign this agreement to become a tenant and take on the rights and responsibilities of this. It was also undisputed that MC never paid rent to the Landlord. From this, I find there is insufficient evidence to establish even an implied tenancy was formed to include MC as a tenant. As such, I remove them as party to both Applications.

The result of the above is that the Tenant is the sole party to these Applications that is responsible for rent. This obligation continues until the tenancy is ended. Further, if the tenancy is ended in accordance with any of the ways set out in section 44 of the Act and

the Landlord does not have vacant possession of the rental unit after this, for example if MC or another party continues to occupy it, the Tenant may be responsible for any losses that stem from this, such as lost rental income.

Conclusion

The Landlord's Application is dismissed without leave to reapply. The Notice is cancelled. The tenancy continues until ended in accordance with the Act. Rent remains $2,200.00 per month until increased in accordance with Part 3 of the Act.

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: August 08, 2025

Residential Tenancy Branch