



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, DRI, OPL, MNDC, MT, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 49;
2. Extension of time limit to dispute notice to end tenancy – Section 66;
3. Dispute of a rental increase - Section 43;
4. A Monetary Order for compensation - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to an extension of time to dispute the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Did the Tenant receive a rental increase in accordance with the Act?

Is the Tenant entitled to compensation?

### Background and Evidence

The following are undisputed facts: The tenancy started in 2008. The Landlord purchased the rental unit in May 2013. On July 31, 2014 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use (the" Notice") by posting the Notice on the door. The Tenant received the Notice on either August 1 or 2, 2014. The effective date of the Notice is stated as September 30, 2014. Rent is payable on the first day of each month. All rents have been paid to and including October 2014. The Landlord has not given the Tenant the equivalent of one month's rent.

The Tenant states that rent of \$850.00 was payable at the time the Landlord purchased the unit and that the Landlord demanded that the Tenant pay an extra \$50.00 in cash as of June 1, 2013. The Tenant provides witness letters in relation to those payments. The Tenant provides a copy of document dated April 2014 and the Tenant says the Landlord signed this document and the back of his business card showing he charged the Tenant the extra rent. The Tenant states that when the Landlord was asked to repay the overpaid amounts the Landlord retaliated by serving the Tenant with a notice to end tenancy for landlord's use (the" Notice"). The Tenant states that she did not dispute this Notice within the time required as she did not understand what it was about. The Tenant states that she did not read the second page of the Notice. The Tenant requests more time to make her application to dispute the Notice. The Tenant also claims reimbursement for the overpaid rent and the equivalent of one month's rent for the Notice.

The Landlord denies that a rental increase was given to the Tenant and states that they did tell her to expect one in the next year. The Landlord denies that he signed any receipts and states that the signature on the document is not his. The Landlord denies that he raised the rent and states that he did tell the Tenant that the rent was going to be raised in the near future. The Landlord states that he had no need for an extra \$50.00 cash per month from the Tenant.

### Analysis

Section 53 of the Act provides that if a landlord gives a notice to end a tenancy effective on a date that does not comply with the Act, the notice is deemed to be changed to the earliest compliance date. As the Tenant did not receive the Notice until after the first day of the month in August and considering that rent is payable on the first of each month, I find that the effective date of the Notice is incorrect as it does not provide two full months and I note that the effective date is deemed to be changed to October 31, 2014.

Section 49 of the Act provides that where a tenant does not dispute a notice to end tenancy for landlord's use within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Section 66 of the Act provides that a time limit may only be extended in exceptional circumstances. As the Tenant did not provide any evidence of exceptional circumstances for why an application to dispute the Notice could not be made, I find that no extension of the time limit is available to the Tenant. As the Tenant did not dispute the Notice within the time required I find that the Tenant must move out of the unit on October 31, 2014 and that the Landlord is entitled to an order of possession effective 1:00 p.m. on October 31, 2014.

Section 43 of the Act provides that a landlord may impose a rent increase only up to the amount, inter alia, calculated in accordance with the regulations. The allowable rate for 2013 is 3.8%. Section 42 of the Act provides that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Although the Landlord denies collecting a rent increase and denies signing the receipt for collecting cash payments, the Tenant's evidence is compelling and persuasive. I note as well the Tenant's supporting witness letters on the request for and payment of \$50.00 to the Landlord. I therefore find on a balance of probabilities that the Tenant has substantiated that the Landlord collected a rental increase over the allowable rate since June 2013. I also find that the Landlord did not give the Tenant three months notice of

the rent increase. I find that The Tenant is therefore entitled to a rebate of the \$50.00 per month paid for June, July and August 2013 in the total amount of **\$150.00** to accommodate the three month requirement. The Landlord could also only raise the rent by \$32.30. The Tenant is therefore entitled to return of \$17.70 (\$50.00 minus 32.30) for the months September 2013 to October 2014 (14 months) inclusive for a total amount of **\$247.80** ( $17.70 \times 14$ ).

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Based on the agreed facts, I find that the Tenant has substantiated an entitlement to the equivalent of one month's rent in the amount of **\$850.00** for a total entitlement of **\$1,247.80**.

As both applications have been successful I find that each Party will bear the cost of their own filing fee.

### Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on October 31, 2014.

I grant the Tenant an order under Section 67 of the Act for **\$1,247.80**. If necessary, this order may be filed in the Small Claims Court 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 *Residential Tenancy Act*.

Dated: October 24, 2014

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Residential Tenancy Branch

