



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      DRI, MNDC, FF

### Introduction

This matter dealt with an application by the Tenant to dispute two rent increases, for compensation for an overpayment of rent and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord claimed that she did not dispute the Tenant's application and wished to leave the conference call. The Landlord was advised that it was still necessary to inquire into the details of the Tenant's application as it was likely it would have ramifications for other tenants of the rental property. Notwithstanding this advice, the Landlord left the conference call.

### Issues(s) to be Decided

1. Does a Notice of Rent Increase dated May 25, 2008 provide for a rent increase that complies with the Act?
2. Does an undated Notice of Rent Increase with an effective date of November 1, 2009 comply with the Act?
3. Is the Tenant entitled to compensation for an overpayment of rent?

### Background and Evidence

This tenancy started approximately 28 years ago. Prior to the first rent increase (in dispute) that took effect on October 1, 2008, pad rent was \$624.00 per month. The Landlord gave the Tenant a Notice of Rent Increase to take effect on October 1, 2008 which had the effect of increasing the pad rent to \$665.00.

The Tenant argued that that Notice was in error insofar as the proportional amount of the increase was based on a difference between the Landlord's property taxes and municipal utilities for 2006 and 2007 rather than 2007 and 2008. The Tenant also claimed that the Landlord included an amount for private garbage collection which she was not entitled to do. The Tenant claimed that rent should have only been increased to \$654.12 and as a result, sought compensation for an overpayment of \$90.12. The Landlord said she agreed with the Tenant's calculations and refunded the Tenant \$90.12.

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The Tenant also argued that a second Notice of Rent Increase to take effect on November 1, 2009 was invalid insofar as it was undated and unsigned by the Landlord. The Tenant also noted that this Notice was based on the amount of rent calculated from the previous incorrect Notice. The Tenant also argued that there were more than 33 lots in the manufactured home park but provided no evidence in support of that allegation. Consequently, the Tenant said she has continued to pay \$654.00 per month for pad rent.

## Analysis

I find that the 1<sup>st</sup> disputed Notice of Increase dated May 25, 2008 is incorrect in that the proportional amount is calculated using the difference of the 2006 and 2007 property taxes and municipal utilities instead of using the difference between the 2007 and 2008 values. In making this finding having regard to the fact that the Notice was issued approximately a few weeks prior to the issuance of the property tax notice but (for some unexplained reason) 4 clear months prior to the effective date of the Notice. The Act only requires that a Landlord gives a Tenant 3 clear months notice and had the Landlord done so in this case, she would have had the 2008 property tax notice information.

I further find that the Landlord included in the calculation of the proportional amount, an amount for private garbage collection which she was not entitled to do. I have reviewed the Tenant's calculations and I find that they are correct with the result that the rent increase for 2008 should have been \$22.49 per month for a total pad rent of \$646.49 rather than \$665.00 as calculated by the Landlord.

Section 35(3) of the Act says that a notice of rent increase must be in the approved form. The 2<sup>nd</sup> disputed Notice of Rent Increase that is to take effect on November 1, 2009 is undated and unsigned and for those reasons, I find that it does not comply with s. 35 of the Act and is unenforceable. Consequently, the Landlord will have to re-issue new Notices and in the interim, the Tenant's rent will remain at \$646.49 until a new, enforceable Notice of Rent Increase takes effect. I also note that the 2<sup>nd</sup> disputed Notice of Rent Increase is incorrect insofar as the new rent should have been calculated using the former (corrected) rent of \$646.49 and not \$654.00.

Section 36(5) of the Act says that if a Landlord collects a rent that does not comply with the Act, the tenant may deduct the increase from rent. The Tenant has already been reimbursed \$90.12 for overpayments for 2008/2009. If there are any further overpayments, the Tenant may deduct those amounts from her rent but must give the Landlord a written account showing how she calculated the amount of the overpayment deducted from her rent. As the Tenant has been successful in this matter, she is also



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entitled to recover the \$50.00 filing fee and may deduct that amount from her next pad rent payment when it is due and payable.

## Conclusion

The Tenant's application is allowed. 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: December 16, 2009.

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Dispute Resolution Officer