



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes MT, DRI, CNR, MNDC, RR

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy for non-payment of rent, a request to dispute an additional rent increase, and a request for a monetary order for \$2592.00.

### Background and Evidence

The applicant testified that:

- The landlord has raised the rent numerous times since 2004, without using the proper notice of rent increase, and has increased the rent by more than allowed under the Residential Tenancy Act.
- As a result of these improper rent increases he has calculated that he has overpaid the rent by \$2592.00 over the years.

- He is therefore requesting that the Notice to End Tenancy for non-payment of rent be cancelled, and that an order be issued for the return of the overpayment of rent.

The landlord testified that:

- He was not aware that a notice the rent increase had to be on a particular form, or that he was limited in the amount he could increase the rent.
- He has had numerous expenses over the years to upkeep the property and that is why he has been raising the rent.

### Analysis

The following are the requirements of the Residential Tenancy Act with regards to raising the rent:

#### **Rent increases**

**41** A landlord must not increase rent except in accordance with this Part.

#### **Timing and notice of rent increases**

**42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

**(3) A notice of a rent increase must be in the approved form.**

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

**Amount of rent increase**

**43** (1) A landlord may impose a rent increase only up to the amount

**(a) calculated in accordance with the regulations,**

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

In this case the landlord's notices of increase were not in the approved form, and the amount of the rent increase was not calculated in accordance with the regulations. Therefore the tenants has overpaid the rent; however I am not willing to order the recovery of the overpaid rent right back to the beginning of this tenancy, because the tenant has an obligation to mitigate his loss, and therefore should have filed a dispute of the improper rent increases long ago.

It is my decision that I am willing to go back 18 months, to when the rent was increased from \$790.00 per month to \$840.00 per month. The allowable amount of rent increase at that time was 3.7% and therefore the maximum increase allowed was \$29.23. The

rent therefore should have only been increased to \$819.23. The tenant has therefore overpaid the rent by \$20.77 for the past 18 months, for a total overpayment of \$373.86.

Therefore it at this time there is no rent outstanding and the Notice to End Tenancy is therefore not a valid notice.

### Conclusion

It is my decision that the present rent payable for this rental unit is \$819.23 per month.

The Notice to End Tenancy is therefore cancelled and this tenancy continues.

I have issued an order for the respondent to pay the tenant \$373.86.

The remainder of the tenants claim 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: February 22, 2011.

---

Residential Tenancy Branch