



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

DRI , FF

### Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Notice of Rent Increase served by the landlord, that the tenant felt was not compliant with the Manufactured Home Park Tenancy Act , (the Act) and an order to be reimbursed for the cost of filing the application for dispute resolution.

Both parties appeared at the hearing and gave evidence.

### Issue(s) to be Decided

The tenant was seeking to cancel a Notice of Rent Increase in excess of that permitted under the Residential Tenancy Regulation, (the Regulation).

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord had issued a notice that contravened Part 4 of the Act and Part 5 of the Regulation.

### Background and Evidence

Submitted into evidence was a copy of a “Notice of Rent Increase – Manufactured Home Site” dated September 23, 2011, purporting to be the landlord’s notice to increase the rent from \$350.25 to \$377.71 effective January 1, 2012.

The tenant testified that the landlord had imposed an increase that exceeded the 4.3% maximum under the legislation, thereby illegally increasing the rent. The tenant testified that the higher rent was not paid by the tenant for January 2012, pending the outcome of this hearing. In fact, the tenant acknowledged that they had withheld the entire rent for January. The tenant’s position is that the rent increase was not fair and will cause undue hardship to the tenants, who are on a fixed income.

The landlord testified that the amount of the increase was calculated in accordance with the Manufactured Home Park Tenancy Regulation and pointed out that the form utilized for determining the maximum amount of the increase was followed in every respect.

The formula correctly used on the form took into account the percentage of increase allowed for the pad rent and the tenant's portion of increases in taxes and sewage management costs from the previous year. These claimed expenditures were supported with copies of the invoices from the municipality. The calculations confirmed that the maximum possible increase that could be charged per year was \$329.44. The landlord testified that this was the basis for the increase imposed, stated to be \$27.46 per month on the Notice.

### **Analysis**

The Act governs when, how and how much a landlord may increase the rent. In regard to rent increases, section 34 of the Manufactured Home Park Tenancy Act states that a landlord must not increase rent except in accordance with the Act and Regulation.

Section 35 of the act states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. I find that the Notice in evidence, issued by the landlord, did comply with this section of the Act.

In addition, section 35(3) states that a notice of a rent increase must be in the approved form and I find that the landlord's notice had also complied with this section of the Act.

However, section 36(1), specifies that a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations,
- ordered by the dispute resolution officer on a landlord's application for an additional rent increase or
- agreed to by the tenant.

Each year the allowable rate that a landlord can increase the pad rental portion is set by the Director of the Residential Tenancy Branch based on 2% + inflation. The percentage for 2012 was set at a maximum of 4.3%. In addition to the increase allowed for the pad rental, a landlord can also add an increase reflecting higher charges for local government levies and public utility fees. Included in the total calculation for the increase, is the tenant's proportionate share of increased costs incurred by the landlord for these local government levies and utilities. In this case, I find that the form submitted by the landlord had correctly calculated the maximum increase allowed for this tenancy. This rightfully included the 4.3% rent increase and the proportionate local levies and utilities totalling an allowable increase of up to \$329.44 per year. I find that this increase would equal \$27.453333 per month. However, I find that the landlord incorrectly imposed a rent increase of 27.46 per month, which exceeds the above maximum under the Act and Regulation.

I call the landlord's attention to the Residential Tenancy Branch form used, titled, "*Notice of Rent Increase - Manufactured Home Site*". I find that the form includes detailed directions under "INFORMATION FOR LANDLORDS and TENANTS of MANUFACTURED HOME SITES" starting on page 4 of 7. On page 7 under "Step 4" the instructions state:

- *"A landlord may increase the rent in any amount up to the maximum allowable amount.*
- *Rent may be rounded down, but not up. For example, rather than setting rent at \$496.73 per month, the landlord may choose to establish the rent at \$495.00 per month but it may not be established at \$497.00."*

I find the amount of increase imposed by the landlord had clearly exceeded the statutory limitation and therefore the Notice issued by the landlord is not valid.

With respect to whether or not a flawed Notice issued by a landlord can ever be amended by the Dispute Resolution Officer to reflect the allowed increase that would comply with the regulations, I find that it would be beyond the scope of my authority and function to intervene. Furthermore would be contrary to administrative fairness and the intent of the Act.

For example, section 36(5) of the Act states that, "*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.*" It is clear that the Act does not contemplate that a tenant would ever be required to pay a reduced amount to emulate a valid increase that could have been legally implemented by the landlord via a fully compliant notice. In fact in the situation where the Notice was flawed, the Act specifically permits a tenant to deduct the total increase, as if no Notice was ever served, not merely just the portion that was charged in excess of the legal limitation.

Moreover, section 36(3) of the Act and section 33(1) of the Regulation permits a landlord, who seeks to increase the rent beyond the limited percentage, the option of filing an application for dispute resolution to obtain an order to accomplish this purpose. I find that the landlord in this situation made no application because he did not intend to seek additional increase of rent in an amount exceeding the usual percentage allowed. In this situation, it is clear that the landlord had merely inadvertently rounded the monetary amount on the Notice of Rent Increase upwards to the next full cent, thereby exceeding the maximum permitted under the Regulation by a fraction of a cent.

Despite the inadvertent mathematical error made by this landlord, I find that I am not able to amend the Notice on the landlord's behalf to change the amount of increase to

make the Notice comply with the Regulation. I must find that the Notice of Rent Increase dated September 23, 2011, is cancelled in total. Accordingly, I order that the tenant's rent will remain at \$350.25 per month, unless, and until, a compliant Notice of Rent Increase is issued and served on the tenant by this landlord.

**Conclusion**

Based on the testimony, evidence and provisions of the Act and regulation, I hereby order that the Notice of Rent Increase dated September 23, 2011, issued to the tenant by the landlord, is permanently cancelled and of no force nor effect.

I find that the tenant is entitled to reimbursement for the \$50.00 fee paid by the tenant for this application and I order that the tenant may reduce the next rental payment in the amount of \$50.00 as a one-time abatement to recoup the cost of filing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: February 01, 2012.

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Residential Tenancy Branch