



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR, DRI, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent and to dispute a noncompliant additional rent increase imposed by the landlord.

Both parties appeared and gave testimony during the conference call.

At the outset of the hearing the tenant stated that he was in the process of vacating the unit in compliance with the landlord's Notice.

Accordingly, I find that the portion of the tenant's application seeking to cancel the Ten Day Notice to End Tenancy for Unpaid Rent is now moot.

However, the tenant is still disputing the issue of rental arrears and the noncompliant rent increase.

### **Issue(s) to be Decided**

Were the landlord's rent increases during this tenancy imposed contrary to the Act and in excess of that permitted under the Act?

### **Background and Evidence**

No copy of the Ten-Day Notice to End Tenancy for Unpaid Rent was submitted into evidence by either party.

The tenant acknowledged not paying the rent but testified that, when his last fixed term tenancy agreement expired, the landlord had required that he sign a new tenancy agreement increasing the rent from \$1,800 to \$2,200 and the tenant did not feel that this was fair, because the rent increase exceeded that allowed under the law.

The landlord testified that the current tenancy agreement, and the ones that were signed prior to this current agreement, were each for a one-year fixed term. The landlord testified that it was the landlord's practice to permit the tenant to sign a new fixed term agreement after each of the previous agreements expired. The landlord

confirmed that the rent agreed-to under the new tenancy agreement was higher than the previous agreement, but pointed out that this new rent was applicable to a completely new tenancy.

The landlord testified that the fixed term tenancy agreement did not contain a term requiring the tenant to move out on the expiry date shown on the contract.

No copies of any of the tenancy agreements were in placed in evidence by the landlord or the tenant.

### **Analysis**

In this instance, based on the testimony of both parties, I find that it was the practice of this landlord to present the tenant with a new tenancy agreement at the end of each fixed term and that the rental rate was increased in the subsequent agreement from that in the previous tenancy agreement.

Section 13 (2) of the Act states that a tenancy agreement must comply with requirements prescribed in the regulations and must set out specific agreed-upon terms. With respect to a fixed term tenancy the contract must include:

(A) the date the tenancy ends, and

(B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date; (my emphasis)

Paragraph 12(3) of the Schedule contained in the Residential Tenancy Regulations provides the following:

*“ If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Residential Tenancy Act.” (my emphasis)*

Therefore, unless the tenancy agreement contains a term initialed by the tenant that specifically requires the tenant to vacate at the end of the fixed term, then the tenancy will automatically convert to a month-to-month tenancy with all of the same terms including the same rental rate. A landlord has no right to require that a tenant sign a new tenancy agreement containing different terms, particularly with increased rent as part of the contract.

Through testimony from both parties it has been established that the tenant paid rent in an amount based on the “new” tenancy agreement, which was an increase from the previous agreement.

Section 43 of the Act states that 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.

A landlord who desires to increase a tenant’s rent by more than the amount of the allowed annual rent increase is required to make a special application for dispute resolution seeking an order permitting an additional rent increase. This is only granted in exceptional circumstances.

The landlord can also ask the tenant to agree to an increase that is greater than the amount allowed. If the tenant does agree in writing to the proposed increase, then the landlord is still required to follow all of the requirements under section 42 of the Act, which sets out the timing and format to be used for issuing the Notice of Rent Increase on the approved form..

With respect to the landlord’s argument that the imposition of the increased rent was valid because a new tenancy agreement was freely entered into and signed by both parties, I find that Section 5 of the Act states that landlords or tenants may not avoid or contract out of the Act or Regulation and that any attempt to avoid or contract out of the Act or Regulation is of no force or effect.

I find that the landlord’s action in requiring the tenant to sign a new tenancy agreement when the existing tenancy converted to a month-to-month tenancy on its expiry date was contrary to the Act. I find that using a new agreement to effect a rent increase larger than that permitted under the Regulation would constitute avoidance of the Act.

Section 43 (5) provides that, if a landlord collects a rent increase that does not comply with the regulation, the tenant may deduct the increase from rent. The tenant is also at liberty to make an application for dispute resolution seeking to recover the overpaid rent.

Given the above and based on the testimony from both parties, I am able to make a finding that the increase in the rental rate being charged by this landlord is not in compliance with the Act.

However, because no copies of the previous and current tenancy agreements were submitted into evidence, I make no finding with respect to the precise amount of the non-compliant rent increases, nor whether the tenant is entitled to recover past rent already paid.

This tenancy has now ended and the tenant's security deposit must be administered in accordance with section 38 of the Act. Either party is at liberty to pursue dispute resolution if they feel that there are still unresolved issues or claims.

As the tenant has been successful in the application, I find that the tenant is entitled to be reimbursed for the cost of the application in the amount of \$50.00 and I hereby issue a monetary order for this amount. This order must be served on the landlord and if unpaid may be enforced through an order from Small Claims Court.

### **Conclusion**

The tenant is successful in the application. The request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent was found to be moot, but the portion of the tenant's application with respect to the additional rent increase was found to have merit.

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: January 17, 2013

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Residential Tenancy Branch

