



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRIO FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 3, 2013, by the Tenant to dispute a rent increase claiming it is in violation of a previous order and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the Notice of rent increase be upheld or cancelled?

### Background and Evidence

The parties confirmed they entered into a written one year fixed term tenancy agreement that began on December 1, 2012. Rent, in accordance with the tenancy agreement, is payable on the first of each month in the amount of \$2,100.00 plus \$20.00 for parking. On or before December 1, 2012, the Tenant paid \$1,050.00 as the security deposit.

The Tenant testified that he filed to dispute the Notice of rent increase because he is of the opinion that this Notice is in violation of a previous Order which granted him a 20% rent reduction. The previous Order indicated the rent reduction as follows:

*...November, December, January, February, March and April of every year of the tenancy, retroactive to December 1, 2012, and continuing until the parties agree that the situation has been resolved or the landlord has obtained an order from an arbitrator that the situation has been satisfactory resolved and the landlord is entitled to payment of the full rent, has also been granted.*

The Landlord testified that the Notice was personally served to the Tenant's wife on August 30, 2013. He clarified that he had made an error in writing the effective date of the rent increase by putting December 1, 2012, instead of December 1, 2013; which he noted the Tenant confirmed in his written submission. He stated that he did not understand how this Notice could be disputed.

In closing, the Tenant confirmed that he was aware that a clerical error had occurred and that the effective date should read December 1, 2013.

### Analysis

Sections 42 and 43 of the *Residential Tenancy Act* stipulate the requirements for a rent increase as follows:

**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.

Section 62(1)(b) of the Act stipulates that the director has the authority to determine any matters related to a dispute that arises under this Act or a tenancy agreement.

Upon review of the Notice of rent increase I accept that both parties were aware of the clerical error made when the Landlord wrote the effective date of the Notice to be December 1, 2012. Both parties confirmed that they understood that the effective date was intended to read December 1, 2013. Accordingly, I amend the Notice of rent increase to read an effective date of December 1, 2013.

I find the amount of rent increase listed meets the legislated amount of 3.8%, the Notice was provide on the prescribed form, and the Notice was served in accordance with the Act.

I do not accept the Tenant's argument that the previous Order prevented the Landlord from issuing a rent increase; as that would be contrary to the Landlord's rights under sections 42 and 43 of the Act. Rather, I find that the previous Order allowed the Tenant a 20% rent reduction of whatever the current amount of rent is payable in accordance with the tenancy agreement and *Residential Tenancy Act*. Accordingly, I dismiss the Tenant's application, without leave to reapply.

For clarity, the Notice of rent increase stands and becomes effective December 1, 2013. Therefore, in accordance with the previous Order of March 25, 2013, effective December 1, 2013, the Tenant will begin paying rent in the amount of \$1,743.84 (\$2,100.00 plus increase of \$79.80 less 20% which is \$435.96), until such time as the Landlord gains relief from the previous order or the rent is increased again, in accordance with the Act.

The Tenant has not been successful with their application; therefore I decline to award recovery of the filing fee.

### Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Notice of Rent Increase dated August 30, 2013, is of full force and effect.

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 17, 2013

---

Residential Tenancy Branch