



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied to cancel an additional rent increase.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Issue to be Decided

Is the tenant entitled to monetary compensation based on an overpayment of rent?

### Background and Evidence

The tenant stated that she received a "Notice of Rent Increase-Residential Rental Units ("notice") and that notice increase the monthly rent by 10% which was more than the allowable limited. The tenant stated at the time she was not aware that the maximum allowable under the regulations was 3.8%. Filed in evidence is a copy of the notice.

The landlord does not deny issuing the notice as filed.

### Analysis

Further, to my oral decision given at the hearing and upon further reflection and consideration of the *Residential Tenancy Act*, the *Regulation* and the *Policy Guidelines*, I find the following.

## 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 2013, the landlord raised the rent from \$500.00 to \$550.00, beginning March 1, 2013. The Regulations allowed the landlord to impose a rent increase up to 3.8%. Therefore, I find the most the landlord was legally allowed to raise the rent was \$19.00, or from \$500.00 to \$519.00. As a result, the notice of rent increase does not comply with the *Act*, or the *Regulations*.

*Residential Tenancy Branch Policy Guideline #37* says that where a landlord issues a Notice of Rent Increase that does not comply with the legislation, it does not result in an increase of rent and the landlord must re-issue a new notice and give the tenant the required 3 months notice before the increase can take effect.

As I have found that the notice of rent increase does not comply with the legislation, it does not result in an increase of rent. Therefore, the **rent remains at \$500.00** as that was the current rent prior to the notice being issued.

Although during the hearing, I had determined the overpayment of rent was \$434.00 however, after further consideration of the *Act*, *Regulation* and *Policy Guideline* that amount should be **\$700.00**.

Therefore, I authorize the tenant to deduct the amount of **\$700.00** from future rent payable to satisfy this award.

The landlord is at liberty to re-issue a new Notice that complies with the *Act*, *Regulation* and *Policy Guidelines*.

### Conclusion

The tenant's application to cancel a notice of rent increase is granted. The current rent is \$500.00 per month payable on the 1<sup>st</sup> of each month.

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: April 22, 2014

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Residential Tenancy Branch

