



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, RR, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to dispute an additional rent increase, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the 50 minute duration of the hearing by the Landlord, although the Landlord did submit documentary evidence in advance of the hearing.

### Preliminary Issues

The Tenant testified that he had served the Landlord with a copy of his Application, the Notice of Hearing documents and his initial written evidence personally to the Landlords three days after receiving the documents from the Residential Tenancy Branch. Based on this testimony and the submission of written evidence by the Landlord, I find that the Landlord was served the required documents in accordance with Sections 59(3) and 89(1) (a) of the Act.

The Landlord’s written evidence indicates that she will not be able to participate in this hearing because her telephone is old and relies on her written submissions as her rebuttal to the Tenant’s evidence.

Firstly, I find that the reason provided by the Landlord for her nonappearance at this hearing is not a sufficient and reasonable reason. A party has the ability to have an agent represent them and request an adjournment during the hearing or prior to the hearing, neither of which the Landlord did. Secondly, the Tenant confirmed that he had not received a copy of the Landlord’s written evidence prior to the hearing and therefore, I find that it would be prejudicial to the Tenant for me to rely on the Landlord’s

written submissions without the Tenant having had an opportunity to review and respond to it for this hearing. Therefore, I declined to consider the Landlord's written evidence and the hearing continued with the undisputed evidence of the Tenant.

At the outset of the hearing, the Tenant explained that he was seeking to move out of the rental suite at the end of this month but was not too sure as he had not yet found a place.

The Tenant had made an Application for monetary compensation and on the second page of the Application, while the Tenant failed to select any of the Monetary Order boxes, the Tenant wrote in the monetary amount box \$75.00, and served this to the Landlord.

The Tenant explained that at the end of September 30, 2014 he wanted to claim an increased amount of monetary compensation from the Landlord and provided written evidence of this in a second set of written submissions which were provided to the Residential Tenancy Branch. When the Tenant was asked whether he had served this to the Landlord, the Tenant explained that the Landlord was a distant Landlord who had left her property for another country; as a result, the Tenant registered mailed a copy of this evidence which outlined the increased monetary claim and sent it to her mailing address. However, the Tenant was unable to provide a copy of the Canada Post tracking number.

The Tenant wanted to pursue his increased monetary claim and I explained the procedure for amending his Application as set out by Rule 2.11 of the Rules of Procedure and that I was not satisfied that the Landlord had been put on notice about the Tenant's increased monetary claim.

As a result, the Tenant decided that it was more appropriate to withdraw his monetary claim for the \$75.00 and that he would make a new Application with the increased amount.

In addition, as the Tenant was intending to leave the tenancy at the end of this month, I provided the Tenant with leave to re-apply for his monetary claim for compensation and if he decides to continue with the tenancy, he is also given leave to reapply for a reduction in rent for repairs and services not provided.

The hearing continued to hear the Tenant's Application to dispute an additional rent increase.

### Issue(s) to be Decided

- Has the Landlord followed the rent increase provisions of the Act?
- Is the Tenant legally obligated to pay the rent increase being imposed by the Landlord for November 1, 2014?

### Background and Evidence

The Tenant testified that this tenancy began on June 1, 2013 on a month to month basis. A brief written tenancy agreement was signed by the parties and rent was established in the amount of \$675.00 payable on the first day of each month. The Tenant paid the Landlord a \$340.00 security deposit which the Landlord still retains.

The Tenant testified that he was told by the Landlord in July, 2014 that he would have to start paying an increase in the amount of rent because he had someone else residing in the rental suite and that this increase would start the following month. The Tenant explained to the Landlord in writing that she could not do this and was required to follow the rent increase provisions of the Act.

As a result, the Tenant was served with a typed letter dated July 31, 2014 which explains that this was the 90 day notice of rent increase and that the Tenant is to pay an increase of 3.71%, which equates to \$25.00 extra, and therefore the rent payable under the agreement will increase from \$675.00 to \$700.00, effective November 1, 2014.

The Tenant explained that he has not paid any rent increases to date but wants the Landlord to comply with the Act in relation to a legal rent increase.

### Analysis

Part 3 of the Act and Policy Guideline 37 to the Act explain the requirements a Landlord **must** follow in order to affect a legal rent increase.

The Act requires the Landlord to give to a Tenant a notice of rent increase at least 3 months before the effective date of the increase and that the notice must be on the **approved form** (currently form RTB 7, available from the Residential Tenancy Branch website). The Act also requires that a Landlord **not** impose a rent increase that is more than the allowable limit which is calculated in accordance with the regulations (for 2014 this is 2.2% and for 2015 this is 2.5%).

Based on the foregoing, I find that the Landlord has not complied with the Act in serving the Tenant with a proper legal and approved notice of rent increase, and that the Landlord seeks to increase the Tenant's rent for an amount that is above the legal limits.

As a result, there is no requirement for the Tenant to pay a rent increase until such time the rent is increased in accordance with the Act.

As the Tenant has been successful in this matter and the Landlord has not followed the provisions of the Act, I award the \$50.00 filing fee to the Tenant. The Tenant is able to obtain this amount by deducting \$50.00 from his next month's rent pursuant to Section 72(2) (a) if he continues with the tenancy.

The Tenant is also issued with a Monetary Order for \$50.00 which he can serve onto the Landlord for payment if the tenancy is ended earlier in accordance with the Act.

Both parties are cautioned that the tenancy must still end in accordance with the provisions of the Act, as detailed in Section 44. The parties are also cautioned that the rights and obligations in relation to the return of a security deposit at the end of the tenancy still apply.

### Conclusion

For the reasons set out above, the Landlord must follow the rent increase provisions of the Act, before the Tenant is obligated to pay a legal rent increase.

The Tenant's Application to recover the filing fee is granted.

The Tenant's monetary claim for compensation and a reduction in rent is dismissed with leave to re-apply.

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 20, 2014

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Residential Tenancy Branch

