



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNR

### Introduction

This review hearing was convened in response to an application by the Tenant disputing a rent increase pursuant to section 43 of the *Residential Tenancy Act* (the "Act") and for an Order cancelling a notice to end tenancy pursuant to section 46 of the Act.

I accept the Tenant's evidence that the Landlord was originally served with the original application for dispute resolution and subsequently, after being found entitled to this review hearing, served the notice of review hearing in person on June 22, 2016 in accordance with Section 89 of the Act. The Landlord did not attend the review hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has the Tenant received a rent increase in compliance with the Act?

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The tenancy started on May 15, 2013 with rent of \$1,050.00 payable on the first day of each month.

On April 4, 2015 the Landlord served the Tenant with a notice of rent increase setting the rent at \$1,100.00 as of August 1, 2015. This amount exceeds the allowable increase. On March 5, 2016 the Parties subsequently signed a second agreement for a backed start date of August 1, 2015 with rent of \$1,100.00 payable on the first day of each month. The Tenant, a single parent of two children, signed this tenancy agreement under fear of eviction.

On April 14, 2016 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent of \$450.00 (the "Notice"). This amount reflected the unpaid rental increase to and including April 2016. On April 14, 2016 the Tenant paid \$100.00 towards the amount indicated on the Notice again because the Tenant was afraid of being evicted.

In a letter dated May 20, 2016 the Landlord agreed to continue the tenancy if, inter alia, the Tenant pays the outstanding rent of \$350.00. Another term of this agreement was that the Tenant would have to enter into another tenancy agreement as of June 1, 2016 and agree to rent of \$1,150.00. On May 26, 2016 the Tenant paid the remaining amount of \$350.00 and paid \$1,150.00 for June 2016 rent. The Tenant paid these amounts again because of fear of eviction. The Tenant did not sign a further tenancy agreement.

On July 1, 2016 the Tenant attempted to pay rent for July 2016 however the Landlord refused to accept the cash offer of \$788.75. The Tenant offered this amount as the amount calculated to be owed after deducting the overpayments of rent.

The Tenant disputes the rent increase to \$1,100.00 as of August 1, 2015 and to \$1,150.00 as of June 1, 2016 and seeks a cancellation of the Notice.

### Analysis

Section 43 of the Act provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, or agreed to by the tenant in

writing. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations or if the term is unconscionable. Section 43 of the Act provides that if a landlord collects a rent increase that does not comply, the tenant may deduct the increase from rent or otherwise recover the increase.

Based on the undisputed evidence of the Tenant I find that the Landlord attempted to increase the rent above the amount allowed under the Act by serving a notice of rent increase that increased the rent from 1,050.00 to \$1,100.00. As such I find that the notice of increase is not valid and of no effect.

Although the Tenant subsequently signed a tenancy agreement for rent of \$1,100.00, based on the undisputed evidence of the Tenant I find that the Tenant signed this under the threat of eviction and for an amount greater than allowed under the Act. I find therefore that the rental amount term is both contrary to the act and unconscionable and is therefore not enforceable. I find that the Tenant is only required to pay monthly rent of \$1,050.00 until such time as the Landlord increases the rent in accordance with the Act.

As the amount of rent indicated on the Notice is based on an invalid rental increase I find that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant overpaid rent from August 1, 2015 forward by \$100.00 + 350.00 + 100.00 to and including June 2016, I find that the Tenant is entitled to reimbursement of the overpayment of **\$550.00**. The Tenant may deduct this amount from future rent payable.

### Conclusion

The Notice is not valid and is cancelled.

The monthly rental amount payable by the Tenant is \$1,050.00.

I grant the Tenant an order under Section 67 of the Act for **\$550.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 06, 2016

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Residential Tenancy Branch