



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, DRI, MNDC, OLC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling two notices to end tenancy - Sections 46 and 47;
2. An Order in relation to disputed rent increase - Section 43;
3. A Monetary Order for compensation - Section 67;
4. An Order for the Landlord’s compliance - Section 62; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord did not appear at the hearing. The Tenant states that it followed the notice placed on the Residential Tenancy Branch (the “RTB”) website instructing parties to serve documents by courier because of the postal strike. The Tenant thought that the postal strike was on. The Tenant states that it followed the RTB service instructions and sent the application for dispute resolution and notice of hearing by courier. The Tenant believes that a signature was required for this delivery. It is noted that the Landlord served an evidence package to the RTB indicating that the Landlord received the notice of hearing and other required documents. Given this evidence I find that the Tenant sufficiently served the application for dispute resolution for the purposes of the Act in accordance with section 71.

The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Tenant states that it did not receive any copy of the evidence package provided to the RTB. Given this undisputed evidence I decline to consider the Landlord's evidence package.

The Tenant confirms that the Landlord served the Tenant with a two month notice for landlord's use with an effective date of August 31, 2016 and the Tenant has not disputed this notice. The reason indicated on the notice is that the Landlord or a close family member of the Landlord will occupy the unit. The Tenant confirms that the Tenant will be moved out of the unit on August 31, 2016. As the Tenant's claims to dispute the notices to end tenancy and for an order for the Landlord's compliance are only relevant to an ongoing tenancy, I dismiss these claims.

### Issue(s) to be Decided

Did the Tenant receive a rent increase in accordance with the Act?

Is the Tenant entitled to compensation?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

There is no written tenancy agreement. The tenancy started on March 1, 2015. Rent of \$1,100.00 was payable on the first day of each month. The Tenant paid a security deposit of \$550.00. Sometime during the fall of 2015 the Landlord verbally informed the Tenant that the rent would increase to \$1,250.00 per month as of January 1, 2016. The Tenant paid the increased amount as the Landlord told the Tenant to pay it or the Landlord would end the tenancy. The Tenant has since deducted the 6 payments of \$150.00 for a total amount of \$900.00 from rent payable in July 2016. The Tenant withheld rent for August 2016 in lieu of the one month rent payable to the Tenant from the Landlord for the Landlord's Use notice. The Tenant seeks an order that \$900.00 was rightfully taken back by the Tenant.

Analysis

Section 42 of the Act provides, inter alia, that a landlord must not impose a rent increase for at least 12 months the date on which the tenant's rent was first established under the tenancy agreement. Section 43 of the Act provides that if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase.

Based on the undisputed evidence that the Landlord increased the rent 6 months after the rent was first established under the oral tenancy agreement and collected the increased rent, I find that the Landlord collected rent that does not comply with the Act. The Tenant was entitled to deduct the overpaid rent from July 2016 rent. As the Tenant has already deducted the overpayment I dismiss the claim for compensation. However, given that the Tenant has been successful with the finding of a wrong rent increase I find that the Tenant is entitled to recovery of the **\$100.00** filing fee.

Conclusion

I grant the Tenant an order under Section 67 of the Act **\$100.00**. 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: August 29, 2016

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Residential Tenancy Branch