



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prompton Real Estate Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, 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. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Agent for the named corporate Respondent appeared and stated that they were not involved in acting as an agent for the Landlord in carrying out duties as the Landlord and questions why they were named in the application. The Tenant clarified that the corporate Respondent was named as the Tenant did not know how to contact the purchaser of the unit. The Tenant confirmed that the subject matter of this hearing has nothing to do with the purchase or sale of the unit and that the dispute is only in relation to the collection of a rent increase during the tenancy with the named Landlord. The Landlord confirmed that Respondent SV did not act as an agent for the Landlord in relation to this matter. Given the Tenant’s clarification I found that the corporate Respondent is not properly named as a Party to the dispute and the Agent was allowed to leave the hearing. The corporate Respondent will not be included in any order that may be issued. As Respondent SV did not act in relation to the tenancy and the matter at hand I also exclude this Party from any order that may be issued.

Issue(s) to be Decided

Is the Tenant entitled to recovery of a rent increase?

Is the Tenant entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are undisputed facts: The tenancy started on August 1, 2009 and ended on April 27, 2016. The Tenant paid rent to the named Landlord up to and including March 2016. No rent was paid for April 2016 in lieu of the two month notice to end tenancy for landlord's use that was given to the Tenant to end the tenancy as the unit was sold. The security deposit that was collected by the Landlord at the outset of the tenancy was returned to the Tenant from the purchaser of the unit. At the onset of the tenancy rent of \$975.00 was payable on the first day of each month. On January 1, 2013 the Landlord gave the Tenant a letter increasing the rent by \$75.00 as of April 2013. The Tenant paid the increased amount to the end of the tenancy but did not sign an agreement to the increase.

The Tenant claims recovery of the rent increase for 39 months in the amount of \$2,925.00.

Analysis

Section 42 of the Act provides that a notice of a rent increase must be in the approved form. Section 43 of the Act provides that a landlord may impose a rent increase only up to the amount, inter alia, calculated in accordance with the regulations or agreed to by the tenant in writing. Section 43 further provides that 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. The allowable rent increase for 2013 was 3.8%. Based on the undisputed evidence that the Landlord did not use the required form for the notice of increase and considering that the increase of \$75.00 exceeds the allowable increase for 2013 I find that the Landlord's rent increase was not in compliance with the Act. Further, although the Tenant paid this amount, such payment

cannot be considered a form of written agreement to the non-complying increase. As a result I find that the Tenant is entitled to the return of **\$2,925.00**.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement to **\$3,025.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,025.00**. 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: October 21, 2016

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Residential Tenancy Branch