



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            DRI, CNR, OLC, FF

### Introduction

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

1. An Order in relation to a disputed rent increase - Section 43;
2. An Order cancelling a notice to end tenancy - Section 46;;
3. An Order for the Landlord’s compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

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

### Issue(s) to be Decided

Are the Tenants entitled to recovery of a rent increase?

Is the notice to end tenancy valid?

Are the Tenants entitled to an order that the Landlord comply with the Act or tenancy agreement?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started in 2012 with rent of \$900.00 payable on the first day of each month. In early 2014 the rent was reduced to \$800.00. On August 19, 2016 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent (the “Notice”) of \$300.00 due August 1, 2016.

The Landlord states that the Tenants verbally agreed to a rent increase to \$1,200.00 as of February 1, 2016. The Landlord states that this amount has never been paid and that the Tenants paid \$900.00 per month for July to October 2016 inclusive. The Landlord states that the \$300.00 is made up of monies from the rent increase that has not been paid by the Tenants.

The Tenant states that no rent increase was ever agreed upon and nothing was signed by the Tenant to agree to the rent increase.

The Tenant states that they have no heat. The Landlord states that the heat should be working. Although not stated at the hearing it is noted that the Tenants also indicated in their application that they are also not receiving hot water. The Tenants state that they have been giving the Landlord time to remedy the situation.

#### Analysis

Section 42 of the Act provides, inter alia, 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

- (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.

As the Landlord did not provide any notice of rent increase in the approved form and as the Tenant did not agree to an increase in writing I find that the Landlord has not increased the rent in accordance with the Act. The rent is therefore \$800.00 per month.

Section 43 of the Act 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 2016 is 2.9%. As the Landlord collected rents for July to October 2016 that is not in compliance with the Act I find that the Tenants are entitled to return of **\$400.00** for these months. As the unpaid rent amount indicated in the Notice is based solely on the rent increase I find that the Notice is not valid and that the Tenants are entitled to its cancellation. The tenancy continues.

There is no dispute that the tenancy agreement includes heat and hot water. In light of the Landlord's evidence that the Landlord believes the heat is on but considering that the Tenant's evidence is that the heat is not on I find on a balance of probabilities that the Tenants are not receiving heat. Given the start of the cold weather season I order the Landlord to immediately ensure that the Tenants are receiving heat and hot water to their unit. Should the Landlord fail to do so the Tenants have leave to reapply for compensation and further orders.

As the Tenants have been successful I find that the Tenants are also entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$500.00**. The Tenants may deduct this amount from future rent payable in full satisfaction of the entitlement.

#### Conclusion

The Notice is cancelled and of no effect. The Landlord is ordered to ensure that heat and hot water are provided to the Tenants immediately. I grant the Tenant an order under Section 67 of the Act for **\$500.00**. 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 17, 2016

---

Residential Tenancy Branch