



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNC

### Introduction

This hearing was convened in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on August 18, 2016 to dispute an additional rent increase and to cancel a notice to end tenancy.

The Landlord, the Tenant, and the Tenant’s daughter appeared for the hearing. Only the Landlord and Tenant provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application. Apart from the notice to end tenancy, the parties confirmed that they had not provided any evidence prior to this hearing for this file. The hearing process was explained to the parties and they had no questions about the proceedings.

### Issue(s) to be Decided

- Is the rent increase imposed on the Tenant illegal? If so, how much rent is the Tenant required to pay for this tenancy?
- What is to happen with the notice to end tenancy?

### Background and Evidence

The parties agreed that this tenancy started in 2008 and is currently a month to month tenancy. The parties agreed that prior to August 2016 the rent amount payable for the site by the Tenant was \$225.00 on the first day of each month.

The parties confirmed that the Tenant was served with a Notice of Rent Increase that informed the Tenant that he was to pay increased rent of \$250.00 starting on August 1, 2016. The Tenant testified that he explained to the Landlord that the amount he was seeking to increase the rent by was above the legal allowable limit. However, the Tenant paid the illegal rent increase for August, September and October 2016 pending the outcome of this hearing and now seeks the overpayments from the Landlord.

The Landlord acknowledged that the amount he had increased the rent by was in excess of the legal allowable amount and that he had increased the rent of other sites within the manufactured park in this manner which other renters had agreed to. The Tenant stated that he had not given written consent to the Landlord to increase his rent beyond the allowable amount. The Landlord confirmed that he had not obtained any written consent from the Tenant and acknowledged that the amount of rent increase he could have imposed on the Tenant pursuant to the Notice of Rent Increase would have been \$6.53. This would have resulted in rent payments for this tenancy at \$231.52 per month from August 2016 onwards.

I then turned my mind to the notice to end tenancy. The Tenant confirmed that he had been personally served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on August 15, 2016. The 1 Month Notice was provided into evidence and shows a vacancy date of August 17, 2016. The Landlord testified that he had supporting evidence of the reasons he had indicated on the 1 Month Notice for ending the tenancy but had not provided this prior to the hearing and was not willing to rely alone on his oral testimony. As a result, the Landlord stated that he was willing to withdraw the Notice so that he could serve the Tenant with another notice to end tenancy and be given an opportunity to prove the Notice. The Tenant agreed to the Landlord withdrawing the 1 Month Notice.

### Analysis

Part 4 of the Manufactured Home Park Tenancy Act (the "Act") explains the rent increase provisions that parties must follow during a tenancy. Section 36(1) (a) of the Act allows a landlord to increase a tenant's rent only up to the amount calculated in accordance with the Manufactured Home Park Tenancy Regulation (the "Regulation"). Section 32(2) of the Regulation provides for the calculation that is used to determine the percentage amount of a rent increase each year. For 2016, this has been determined to be 2.9%. Therefore the maximum amount of rent increase allowed pursuant to the Act and the Regulation on \$225.00 is \$6.53 (2.9% of \$225.00).

Although the Notice of Rent Increase was not provided into evidence, I accept the undisputed evidence of the parties that the Tenant was served with a proper Notice of Rent Increase that was due to take effect on August 1, 2016. As the Landlord would have only been able to increase the Tenant's rent for the site from \$225.00 to \$231.53 per month starting on August 1, 2016, I find the Landlord has imposed on the Tenant an illegal rent increase. I find the Tenant has been overpaying rent in the amount of \$18.47 per month from what he should have been paying (\$250.00 - \$231.53). At the time of this hearing this amounts to three months of overpayment for a total amount of \$55.41.

Section 36(5) of the Act provides that if a rent increase does not comply with the Act, a tenant may deduct the increase from rent or otherwise recover the increase. Therefore, I allow the Tenant to deduct \$55.41 from his next installment of rent and order that the rent payable from August 2016 is \$231.53 per month until this is increased pursuant to the Act. The Tenant may want to provide the Landlord with a copy of this Decision when making the reduced rent payment of \$55.41. For clarity purposes, if the Tenant makes the reduced rent payment for November 2016, the amount payable will be \$176.12 for that month. The Tenant is cautioned that only the amounts allowed in this Decision may be deducted from rent, otherwise the Tenant may jeopardise the tenancy by making deductions not authorised in this Decision or provided for by the Act.

In relation to the 1 Month Notice, I find the Tenant disputed it within the ten day time limit provided by Section 40(4) of the Act. A notice to end tenancy may only be withdrawn with the consent of both parties. Therefore, I allowed the parties to withdraw the 1 Month Notice dated August 15, 2016 and the parties were informed that the Landlord is at liberty to issue the Tenant with another 1 Month Notice which the Tenant is at liberty to dispute pursuant to the provisions of the Act. However, I encouraged the parties during the hearing to make attempts to resolve the issues between them as resolution in this manner may be more effective than one through dispute resolution.

### Conclusion

The Landlord imposed an illegal rent increase on the Tenant. The Tenant may recover overpayments made during this tenancy by deducting \$55.41 from future rent. The parties agreed to withdraw the 1 Month Notice dated August 15, 2016. The tenancy will continue until it is ended pursuant to the Act. The rent payable for this tenancy from August 2016 onwards is \$231.52. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: October 17, 2016

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Residential Tenancy Branch