



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Singla Bros. Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

ARI

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an additional rent increase.

An agent for the landlord and a witness attended the hearing and each gave affirmed testimony. The tenant also attended and gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that rent should be increased by more than the amount permitted by the *Residential Tenancy Act* and the regulations?

### Background and Evidence

**The landlord's agent** testified that this tenancy began as a fixed term on September 15, 2015 ending on August 31, 2016, thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit.

At the beginning of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 as well as a \$75.00 remote control deposit. In March, 2016 the tenant also paid \$50.00 for an extra key and all deposits are still held in trust by the landlord. The rental unit is a ground floor suite in an apartment building.

A copy of the tenancy agreement has been provided specifying rent in the amount of \$850.00 per month as well as \$40.00 per month for water. Multiple rent increases were imposed in the building and when photocopied, the 2<sup>nd</sup> page was mixed up with that of another tenant. The landlord's agents discovered the error at year end in December, 2016.

A copy of a Notice of Rent Increase has been provided by the tenant, which is not dated but signed beside "Landlord's Signature." It states that it is the first rent increase; the date rent was established was January 1, 2015; current rent is \$750.00 per month; the increase is \$21.75; new rent will be \$771.75 per month starting on May 1, 2015; plus \$25.00 for water. However, rent at the beginning of this tenancy was \$850.00 per month. The landlord's agent testified that the one on file with the landlord, and provided for this hearing, says that rent was established on September 14, 2014 and the current rent is \$850.00; the rent increase is \$24.50 and the new rent will be \$874.50 starting on May 1, 2016; plus \$40.00 for water. It wasn't dated when it was signed.

As a result of the error, the tenant continued to pay the lower amount without alerting the landlord of the error.

The landlord's agent further testified that smaller units pay \$25.00 for water and the larger units, including this rental unit pay \$40.00 per month for water. Also, other units on the same floor pay over \$1,000.00 per month including water, so their actual rent would be \$40.00 less. The increase should have brought the rent to \$874.50 commencing May 1, 2016 and if another Notice of Rent Increase were to be served, it would be at the current rate of 3.7%, or \$32.36, bringing the rental amount to \$906.86. The landlord is seeking to increase the rent to \$969.09 to recoup the money lost and bring the rental amount to the market value.

**The landlord's witness** testified that she has worked as a property manager for the landlord for almost 2 years, and testified to the amount of rent payable by other units on the same floor as this rental unit.

The witness also testified that the 2<sup>nd</sup> page of the Notice of Rent Increase belonged to a different unit, making the amount of rent lower and water lower than the original tenancy agreement. The tenant did not talk to the witness about it. The witness believes that the 2<sup>nd</sup> page erroneously given to the tenant belonged to a smaller rental unit, and the tenant's rental unit is quite a bit larger, has inside access from the lobby, and a more secure unit. It also has underground parking.

**The tenant** testified that the evidence is self-explanatory, and the tenant honored the Notice of Rent Increase, and if there was an error, the landlord ought to have contacted the tenant. The tenant thought the landlord would catch it, but rent was paid accordingly.

The parties agree that the error was brought to the attention of the tenant in January, 2017.

### Analysis

A Notice of Rent Increase is not a Notice of Rent Decrease, and the tenant has been aware of that since it was served. However, I am not satisfied that the tenant ought to have known how much of an increase was allowed or what the increase should have been.

The landlord has not applied for monetary compensation to recoup losses and relies on an application for an additional rent increase to recoup those losses. The landlord's agent testified that if the correct page of the Notice of Rent Increase had been served in 2016, rent would have been \$874.50 per month commencing May 1, 2016, and the landlord seeks to recoup losses from that error by increasing rent to \$969.09 per month. However, in completing the math, if the correct notice had been served, it would have increased rent to \$874.50 per month, and if another notice was served this year at the allowable 3.7%, rent would be increased by \$32.36 per month, bringing the total amount of rent payable to \$906.85. I also find that if I were to allow the increase applied for, the tenant would be paying a higher amount of rent than the landlord would have received had there been no error, which would continue after any losses had been realized and until the tenancy ends.

I am not satisfied that the landlord should entirely recoup losses caused by the landlord's own error. However, I find that the tenant ought to have dealt with this matter in an honest manner when the notice was served. I find it just in the circumstances to increase rent to \$906.85 per month. I also find that the increase should be effective May 1, 2017, given that the Notice of Rent Increase given in error was effective May 1, 2016.

### Conclusion

For the reasons set out above, I hereby order that rent be increased to \$906.85 per month in addition to \$40.00 per month for water, commencing May 1, 2017.

This order is final and binding and may be enforced.

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: March 30, 2017

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Residential Tenancy Branch