



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Gateway Property Management Corporation  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes 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 for the Landlord's compliance - Section 62; and
2. An Order to recover the filing fee for this application - Section 72.

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

#### Issue(s) to be Decided

When does the Landlord's notice of rent increase take effect?

Is the Tenant entitled to an order for compliance?

Is the Tenant entitled to recovery of the filing fee?

#### Background and Evidence

The tenancy started on August 1, 2013. Rent of \$1,755.00 was originally payable. The Tenant received valid rent increases effective April 1, 2015 and August 1, 2016. The Tenant was given a rent increase effective August 1, 2017 that contained no increase in rent. The Tenant accepts that this notice of rent increase was made in error.

The Tenant states that no other notice of rent increase was given to him until October 3, 2017 when he received a corrected notice of rent increase (the “Corrected Notice”) of \$65.00 with an effective date of September 1, 2017 placed in his unit door mailbox. The Tenant argues that the effective date of the Corrected Notice should be February 1, 2018. The Landlord states that Corrected Notice was sent to the Tenant by regular mail on May 24, 2017. The Landlord did not have a witness or receipts for this mail.

Analysis

Section 42(2) of the Act provides that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(4) of the Act provides that if a landlord's notice of a rent increase does not comply with subsections (2), the notice takes effect on the earliest date that does comply.

Although the Landlord states that it mailed the Corrected Notice to the Tenant by regular mail on May 24, 2017 there is no evidence to support this oral evidence. As the Tenant gives equally plausible oral evidence that no rent increase was received from the Landlord until October 3, 2017 and considering that the Landlord made an error on the previous notice to increase rent, I find on a balance of probabilities that the Tenant did not receive the Corrected Notice until October 3, 2017. The Corrected Notice is therefore effective February 1, 2018. I order the Landlord to comply with the terms of the Corrected Notice and to only collect the increase effective February 1, 2018.

As the Tenant's claim has met with success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee. The Tenant may deduct this amount from future rent payable.

Conclusion

I order the Landlord to comply with the effective date of February 1, 2018 for the rent increase.

I grant the Tenant an order under Section 67 of the Act for **\$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: January 17, 2018

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Residential Tenancy Branch