



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, MNDCT, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed receipt of the tenant's dispute resolution hearing package sent by the tenant by registered mail on January 1, 2018 and the amended application handed to the landlord, I find that the landlord was duly served with these documents in accordance with section 89(1) of the *Act*. Since both parties confirmed receipt of one another's written evidence packages, I find that these packages were duly served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Should any order be issued with respect to the monthly rent established for this tenancy commencing on January 1, 2018? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began on December 15, 2013 by way of a one-year fixed term Residential Tenancy Agreement. Since that time, the parties have signed new one-year fixed term Residential Tenancy Agreements each year. Monthly rent during 2017 was set at \$985.00, payable in advance on the first of each month.

On November 2, 2017, the tenant signed a new one-year fixed term Residential Tenancy Agreement (the Agreement); the landlord's representative signed that Agreement on November 17, 2017. According to the terms of the Agreement, monthly rent was to increase from \$985.00 to \$1,095.00 as of January 1, 2018 until December 31, 2018. An undated Notice of Rent Increase document from the landlord's building manager was entered into written evidence as part of the tenant's evidence package, which appears to have been issued in October 2017.

The tenant applied to modify the Agreement because they believed that the new legislative provisions of the *Act* and the *Regulations* established pursuant to the *Act* limited the landlord from increasing the monthly rent for 2018 to 4.0%, the maximum rent increase allowed for month-to-month tenancies. After consulting with the Residential Tenancy Branch (the RTB), the tenant submitted their application to reduce the \$1,095.00 in monthly rent being charged by the landlord for their rental unit as they believed that the amended legislation converted this tenancy to a month-to-month tenancy as of January 1, 2018. The tenant's amended application for a monetary award of \$681.00 reflected the difference that the tenant would have paid for the upcoming year of their fixed term tenancy had the landlord been limited in the amount of monthly rent increase to the 4.0% maximum that would have been allowed under the *Regulations*.

The landlord's agent (the agent) submitted written evidence that the tenant had misinterpreted the effective date as to when the provisions relating to rent increases took effect. Rather than October 26, 2017, the date when other portions of the legislative changes took effect, the landlord submitted that December 11, 2017 was the correct effective date that would limit the landlord's ability to increase monthly rents beyond the amounts already in place for month-to-month tenancies.

## Analysis

At the hearing, I recognized that the timing of the effective dates of the legislative changes to the *Act* and the *Regulation* had led to some confusion for landlords and tenants. Both parties were seeking a clarification of this matter.

Section 41 of the *Act* establishes that a landlord must not increase rent except in accordance with Part 3 of the *Act*. Section 42 of the *Act* provides the following current guidance regarding the timing and notice of rent increases for residential tenancies:

**42** (1) *A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

*(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;*

*(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.*

*(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*

*(3) A notice of a rent increase must be in the approved form.*

*(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply...*

Section 43 of the *Act* specifies the extent to which a landlord can increase rent. Sections 43(3) of the *Act* and section 23(1) of the *Regulation* allow a landlord to request the director's approval of a rent increase that is greater than the amount allowed under the *Regulation* under certain limited circumstances.

As was noted by both parties, the allowable rent increase amount set out in the *Regulation* for 2018 is four per cent. Both parties agreed that the landlord did not initiate the process for requesting an additional rent increase.

On October 26, 2017, *Bill 16, Tenancy Statutes Amendment Act, 2017 (Bill 16)*, was first introduced in the Legislature. *Bill 16* introduced a series of changes to the *Act* and to the *Regulations* established pursuant to the *Act*. It passed Third Reading in the Legislature on November 8, 2017.

In addition to ensuring that all fixed term tenancies convert to month-to-month tenancies upon the expiration of the initial term, *Bill 16* changed the rent increase provisions of paragraph 42(1)(a) of the *Act*, as noted above.

At the hearing, the issues seemed to narrow to when the transition to the new rent increase provisions of paragraph 42(1)(a) of the *Act* was to take effect. The tenant believed that the changes were to take effect immediately; the landlord maintained that the Agreement for 2018 was signed before the new rent increase provisions were to take effect.

One of the changes from *Bill 16* took effect retrospectively; other changes took effect as of October 26, 2017. Still others did not take effect until December 11, 2017, when *Bill 16* received Royal Assent. For example, Section A of the RTB's Policy Guideline 30 provides the following guidance to arbitrators and the public as to the timing of the legislative change involving the "vacate clause" in fixed term tenancies. Section A reads in part as follows:

*Transitional provisions in the Legislation apply this change retrospectively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.*

Most vacate clauses in fixed term tenancies became unenforceable for fixed term tenancies established prior to October 26, 2017, the date when *Bill 16* was first introduced in the Legislature.

By contrast, Section H of the RTB's Policy Guideline 30 provides the following guidance to arbitrators and the public as to the timing of rent increases in fixed term tenancies in the *Act* and the *Regulation*:

*A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must be given three full months' notice of the increase.*

Section I of that Policy Guideline notes that December 11, 2017 was the Effective Date when Section H was to take effect.

The importance of issuing of Notices of Rent Increase is also outlined at Section D of RTB Policy Guideline 37 on Rent Increases, which reads as follows:

*A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.*

*The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.*

*Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.*

In this case, the legislation in place at the time of the signing of the new Agreement for 2018 did not limit landlords to the four per cent rent increase amount because the parties had a fixed term tenancy that was to end on December 31, 2017. However, sections 42(2) and 42(3) of the *Act* still needed to be followed in order to make any increase in rent, even within the 4% allowable limit to take effect.

At the hearing, I advised the parties that it appeared to me that the landlord was within their rights to create a new tenancy agreement that increased the monthly rent beyond the four per cent that would have been allowed had this been a month-to-month tenancy. I concluded that the rent increase changes resulting from *Bill 16* took effect on December 11, 2017, after both parties signed their new Agreement for 2018. Since the changes to the relevant portion of the *Act* had not taken effect when they signed the new Agreement, I advised the parties that the previous wording of the legislation applied. I noted that the previous wording of the legislation allowed landlords and tenants to sign new Agreements at the end of a fixed term tenancy for whatever monthly rate they agreed to when they signed their new Agreement. I provided this information

to the parties at the hearing on the assumption that the landlords had followed the provisions of section 42(2) and (3) of the *Act* relating to the issuance of notices to the tenant of the pending rent increase.

Upon further inspection of the written evidence, I discovered after this hearing that a document described by the tenant as being the Notice of Increase Form issued by the landlord was in actuality a typed and undated letter sent to the tenant by the landlord's building manager. In fact, no evidence has been submitted that would demonstrate that the landlord issued a Notice of Rent Increase on the approved form as required by section 42(3) of the *Act*. Similarly, there is no clear evidence that even the landlord's typed letter was issued at least three months before the Agreement was to take effect.

Due to this new information that I discovered after the hearing, which was not raised by either party, I find that the landlord has not complied with the requirements of section 42(2) and (3) of the *Act*. The notice of rent increase was not on the approved Residential Tenancy Branch form nor was it issued three full months in advance of the increase to the new Agreement. For this reason, I find that the new Agreement calls for a rent increase that is not in accordance with the requirements of section 42 of the *Act*, and as such, is invalid. The failure of the landlord to comply with the provisions of section 42(3) of the *Act* prevent me from correcting the effective date of the new Agreement in accordance with section 42(4) of the *Act*, as outlined above. I find that the new Agreement is invalid and of no force nor effect.

The monthly rent for this tenancy is hereby reduced to \$985.00, the amount agreed to in the last valid tenancy agreement between these parties. This monthly rent remains in effect until it is revised in accordance with the *Act*. Since the Agreement signed by the parties in November 2017 is of no force or effect, this tenancy converted to a month-to-month tenancy as of the expiration date of the previous valid tenancy on December 31, 2017. I also order that the terms and conditions established in the last valid tenancy agreement that was in place for 2017 are in force for this tenancy.

Based on the above determination, I find that the tenant is entitled to a monetary award of \$110.00 for each month where they have paid \$1,095.00 in monthly rent to the landlord. At present, this would lead to a monetary award of \$110.00 for each of January and February 2018. In the event that the tenant has already paid monthly rent for March 2018, they will also be given credit for this \$110.00 amount towards a future rent payment.

- As the tenant has been successful in this application, they are also entitled to recover their \$100.00 filing fee from the landlord.

- Conclusion

- I allow the tenant's application to set aside the rent increase included in the Agreement the parties signed for a fixed term tenancy running from January 1, 2018. I find that the fixed term tenancy entered into for the period from January 1, 2018 to December 31, 2018, has no legal effect as the Agreement was entered into in contravention of section 42 of the *Act*. I also find that this tenancy converted to a month-to-month tenancy on January 1, 2018, once the existing valid tenancy agreement for this rental unit expired on December 31, 2017. I order that the terms, rights and responsibilities in the previous tenancy agreement that were in place for 2017 now govern this tenancy.
- I order that the monthly rent for this tenancy is set at \$985.00, until changed in accordance with the *Act*.
- I issue a monetary award in the tenant's favour in the amount of \$320.00 under the following terms:

• Item	• Amount
• Return of Portion of January 2018 Rent	• \$110.00
• Return of Portion of February 2018 Rent	• 110.00
• Recovery of Filing Fee for this Application	• 100.00
• <b>Total Monetary Order</b>	• <b>\$320.00</b>

- In order to implement this monetary award, I order the tenant to withhold \$320.00 from a future monthly rent payment to the landlord. I allow the tenant to withhold \$110.00 from any additional months where the tenant may have paid \$1,095.00 to the landlord for monthly rent for this rental unit as per the Agreement.
- I apologize for any confusion that may have arisen as a result of my oral instructions provided at the hearing, issued prior to my subsequent discovery that the landlord had not complied with the notice provisions established in section 42 of the *Act*. I regret any inconvenience that this may have caused the parties.
- 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: February 20, 2018
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Residential Tenancy Branch