



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI

### Introduction

The tenant applies to dispute a rent increase dated January 20, 2018, effective May 1, 2018 purporting to raise her rent from \$750.00 per month to \$777.75.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

It was evident from the tenancy agreement and the rent increase documentation that the tenant's landlord is a limited liability company and not Mr. T.S. who is the building manager. The style of cause was amended accordingly, with Mr. T.S.'s agreement, to name the true landlord.

### Issue(s) to be Decided

Has the landlord attempted to impose a rent increase not in accord with that permitted under the *Residential Tenancy Act* (the "Act")?

### Background and Evidence

The rental unit is a one bedroom apartment in a 114 unit, three floor apartment building.

The tenancy started in December 2013 pursuant to a written tenancy agreement for a fixed term of one year. The terms of the tenancy agreement provided that the rent was

\$750.00 per month. At the same time the tenancy agreement was made the parties also signed a document entitled "RENT INCENTIVE AGREEMENT." It provided:

Upon signing a 12 month lease agreement the tenant(s) will receive a monthly rental concession in the amount of \$ 62 for the term of the lease. In addition the tenant(s) shall receive an immediate incentive of \$ 0 off the first month rent. The term of the lease is December 1, 2013 to November 30, 2014. Tenant must be on Auto Debit to receive the incentive, if Auto Debit is cancelled during the term of the lease the incentives will also be cancelled.

If in any case the tenant breaks the lease within the specified time, any and all lease incentives agreed upon during the lease term will be immediately due and payable to Mainstreet Equity Corp.

As a result, the tenant paid only \$688.00 per month for rent.

In October 2014 another tenancy agreement was entered into on the same terms, with the same incentive agreement.

In October 2015 a third agreement was entered into on the same terms but with an incentive of only \$31.00 per month. The tenant paid \$719.00 per month for the twelve months of that fixed term.

In October 2016 the parties did not sign a fourth fixed term tenancy agreement. Rather, starting December 1, 2016 the existing tenancy carried on as a month to month tenancy with the tenant paying \$750.00 per month rent; the stated amount in the tenancy agreement.

The tenant considers that her rent is \$750.00 per month. She does not argue that it is still \$719.00.

On January 20, 2017 the landlord issued a Notice of Rent Increase in the approved form, increasing the tenant's rent from \$750.00 to \$777.75, effective May 1, 2017. There is no argument that the increase of \$27.75 was not an increase in accordance with the regulation setting the amount of each annual increase permitted to be imposed by a landlord.

It is the tenant's argument that her rent was increased in December 2016 from \$719.00 to \$750.00 and so the January 20, 2017 increase could not be imposed within a year of the December 2016 increase.

## Analysis

Section 42 of the *Act* provides:

**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.

If the change in the tenants rent from \$719.00 in November 2016 to \$750.00 in December 2016 was a “rent increase” then the landlord’s Notice of Rent Increase in January 2017 could not be effective on a date earlier than December 2017.

In considering the interpretation of the tenancy agreement and the “Rent Incentive Agreement” I am mindful that the *Act* is considered to be consumer protection legislation. As Mashuhara J. states in the case of *Samji v. HFBC Foundation* 2012 BCSC 1367, “I recognize that the *Act* confers a benefit and protection to tenants and that authorities state that ambiguities in the interpretation of the *Act* should be resolved in favour of tenants.”

The “Rent Incentive Agreement” is inextricably bound with the tenancy agreement. They were made at the same time. The former is meaningless without the latter and they must be read together. Reading the documents together it is clear that because the tenant agreed to twelve month fixed term tenancy her rent was reduced. She did

not pay \$750.00 each month and then receive an incentive payment back. She paid the reduced amount only.

I find that in November 2016 the tenant's true and actual rent was \$719.00. The ending of the fixed term caused the rent to increase to \$750.00. The Notice of Rent Increase given January 20, 2017 was not in compliance with s. 42 (1) and (2) because it imposed a rent increase within twelve months after the last increase.

Section 42 (4) states that in such an event the rent increase takes effect on the earliest date that does comply. Therefore, the January 20, 2017 rent increase took effect on December 1, 2017, one year after the last rent increase.

### Conclusion

The tenant's application is allowed in part. The January 20, 2017 rent increase did not take effect May 1, 2017 but did come into effect December 1, 2017.

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: April 11, 2018

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Residential Tenancy Branch