



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      CNC DRI FFT MNDCT OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47 and cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49; a monetary order for repayment to the tenant of an unauthorized additional rent increase pursuant to section 43; an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; an order regarding a disputed additional rent increase pursuant to section 43; and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords/respondents did not attend this hearing, although I left the teleconference hearing connection open until 11:21 a.m. in order to enable the landlords to call into this teleconference hearing scheduled for 11:00 a.m. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant/applicant and I were the only ones who had called into this teleconference.

The tenant testified that she sent her Application for Dispute Resolution ("ADR") to the landlords by registered mail on March 23, 2018. She was able to provide Canada Post tracking information that showed the landlords were each sent and each received the tenant's package. I find that the tenant has sufficiently served the landlords with her ADR including Notice of this Hearing and documentary evidence submitted for this hearing in accordance with section 88, 89 and 90 of this Act.

At the outset of this hearing, the tenant testified that she vacated the rental unit on May 15, 2018 and therefore, the tenant withdrew her application to cancel the landlords' 1 Month Notice and the landlords' 2 Month Notice. The tenant also withdrew her application for an Order that the landlord comply with the Act. The tenant proceeded with her application for a determination

with respect to an additional rent increase; and to seek a monetary award for an incorrect additional rent increase; as well as to recover the filing fee for this application.

Issue(s) to be Decided

Was the landlords' rent increase imposed on November 2016 an additional rent increase that the landlord did not seek authorization to impose?

Is the tenant entitled to a monetary award for an incorrect/inaccurate rent increase by the landlord paid during the course of the tenancy?

Is the tenant entitled to recover her filing fee for this application?

Background and Evidence

This tenancy began on June 30, 2012. The tenant testified that there was no written tenancy agreement between the parties. She testified that the rental amount at the outset of the tenancy was \$600.00 paid on the 1<sup>st</sup> of each month. She testified that the rent payment included internet, cable and Wi-Fi as well as heat and hot water ("utilities"). The tenant testified that she vacated the rental unit on May 15, 2018. She testified that the landlords returned her \$300.00 security deposit at the end of her tenancy.

The tenant testified that, in July 2016, the landlords advised her that they intended to increase her rent from \$600.00 each month to \$700.00. She submitted a copy of the rent increase document that was provided to her by the landlords on July 28, 2016. On the rent increase form, the landlords wrote that they "understand that it is quite an increase but it is still not par with the market rate...once [the rent] is at market rate, then we will increase it by the rental association recommended 3 – 4% yearly."

The tenant testified that she paid the initial rent increase from November 2016 to the November 2017. She testified that, on or about December 5, 2017, the landlords advised her that they intended to increase her rent from \$700.00 to \$800.00. They provided similar reasons for the rental increase in 2017 as they provided in 2016.

The tenant testified that she did not pay this second rental increase. She testified that she became aware of the limits on rent increases and advised the landlords of the same. She provided a copy of a handwritten letter advising the landlord of the requirements with respect to rent increases. The tenant testified that she told the landlords she would pay a 4% rent increase – the amount allowed under the Act for the year 2018 by the Residential Tenancy Branch. The tenant testified that, in December 2017, \$728.00– 4% in addition to the \$700.00 rental amount paid from July 2016 to November 2017.

### Analysis

After investigating her rights under the Act, the tenant now applies to recover the \$100.00 in increased rent that she paid from July 2016 to November 2017. She argues that the landlord should have been entitled to increase the rent only by 2.9% (the allowable annual rent increase for year 2016). The tenant also argues that the landlord should have been entitled to increase the rent only by 3.7 % (the allowable annual rent increase for year 2017).

Residential Tenancy Policy Guideline No. 37 deals with rent increases permitted under the *Residential Tenancy Act* (the Legislation). It states that a landlord may increase the rent in two circumstances,

*The Legislation permits a landlord to impose a rent increase up to the amount*  
*(a) calculated in accordance with the regulations, or*  
*(b) ordered by an arbitrator on application.*

A tenant's rent cannot be increased unless the tenant has been given **proper notice** in the **approved form** at least **3 months before** the increase is to take effect. The tenant's rent can only be increased once every 12 months. A rent increase that falls within the limit permitted by the applicable Regulation (in the allowable annual amount) cannot be disputed at a dispute resolution proceeding. The landlords provided proper notice and form for the first increase to the tenant's rent however it was beyond the annual allowable amount. According to the undisputed evidence of the tenant, the landlords attempted to increase the rent a second time, without sufficient notice and again in an amount beyond the annual allowable amount.

The Residential Tenancy Act allows a landlord to apply to an arbitrator for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. The policy intent is to allow the landlord to apply for dispute resolution only in "extraordinary" situations. The Residential Tenancy Regulation sets out the limited grounds for such an application. I find that the landlords did not make an application for an additional increase pursuant to the *Act*. I find that the landlord's rental increase amount (on both occasions: July 2016 and November 2017) does not fall within the acceptable parameters of an annual rent increase related to inflation. Therefore, the landlords were not authorized, under the legislation to increase the rent in the manner they have attempted. I also note that the undisputed testimony of the tenant is that she did not agree in writing or otherwise to the rent increases. The payment of the rent increase from July 2016 does not amount to agreement to the rent increase.

In all of the circumstances, I find that the landlord was not entitled to increase the tenant's rent in July 2016 by \$100.00 and that the landlord was not entitled to increase the tenant's rent in November 2017 by an additional \$100.00. As the landlord has not provided rental increases in

compliance with the Act, I will not *correct* the amount in which the landlords may have been entitled to increase the tenant's rent and I award the tenant a monetary award including the additional rental amounts paid as below and the \$100.00 filing fee for this application. The tenant is entitled to be reimbursed by the landlords as follows,

**Unauthorized increase & payment**

July 2016 to November 2017: \$100.00 per month x 17 months:	\$1700.00
December 2017 to May 2018: \$28.00 per month x 6 months:	\$ 168.00
Filing fee	\$ 100.00
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Total to Tenant	\$1968.00

**Conclusion**

I issue a monetary order to the tenant in the amount of \$1968.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 18, 2018

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Residential Tenancy Branch