



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR FFT

### **Introduction:**

All parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated March 19, 2018 to be effective March 28, 2018 by posting it on the door.

The tenant said they served the landlord with their Application for Dispute dated March 26, 2018 by registered mail and the landlord acknowledged receipt. The tenant applies:

- a) Pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy.
- b) To dispute illegal rent increases since 2014 pursuant to section 43; and
- c) To recover the filing fee for this application.

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

All five parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed that the tenancy began on October 1, 2013, rent was \$1300 and a security deposit of \$650 was paid. The tenant did not pay the rent for March 2018 so the Notice to End Tenancy was served.

The tenant explained that their rent had been increased twice with no Notice of Rent Increase in the form approved by the Act. They deducted the overpaid rent of \$28.60 a month which they had paid for 35 months (total \$1,001.00) plus the overpaid rent of \$77.76 a month for 5 months to the end of February 2018 (total \$388.80). They provided a spreadsheet showing that the total overpayment was \$1389.80 by March 1, 2018 so they deducted \$1300 for March rent and had a credit of \$89.80 which they deducted from April 2018 rent. They also deducted \$100 for the filing fee from a previous hearing in March 2018.

The landlord agreed these numbers were correct but said they had given a verbal notice of rent increase and an email notice of rent increase and thought this should have been sufficient. Based on the tenant's calculations they agreed that if it was necessary to serve a Notice of Rent Increase in an approved form, the tenant owes no rent.

**Analysis:**

I find the applicable portion of section 42 of the Act states:

*(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.*

The Residential Policy Guidelines further clarify:

*Landlords can only increase the rent once in a 12 month period by an amount permitted by law or an additional amount approved in advance by an arbitrator – they need to use the right form and give the tenant three full months' notice of the rent increase.*

Although the landlords in this case gave notice verbally and by email to the tenants, I find these notices were of no effect as the legislation provides that a Notice of Rent Increase must be in the approved form. As discussed in the hearing, the approved form is available on the Residential Tenancy Branch website and the legal increase is 4% for 2018.

I find the tenants legally deducted their overpayments from March 2018 rent in accordance with section 43(5) of the Act so I set aside the Notice to End Tenancy. The tenancy is continued.

**Conclusion:**

I set aside and cancel the Notice to End Tenancy dated March 19, 2018. The tenancy is continued. I find the tenant entitled to recover their filing fee for this application.

**I HEREBY ORDER THE TENANT may deduct \$100 for their rent to recover their filing fee.**

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 05, 2018

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Residential Tenancy Branch