



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 30, 2018 (the “Application”). The Tenants applied to dispute a rent increase that is above the amount allowed by law. The Tenants sought reimbursement for the filing fee.

The Tenants and Landlords appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlords confirmed they received the hearing package and Tenants’ evidence. The Tenants confirmed they received the Landlords’ evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence submitted and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the disputed rent increase above the amount allowed by law?
2. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

Three written tenancy agreements were submitted as evidence. All three are between the Landlords and Tenants in relation to the rental unit.

The first tenancy agreement started November 1, 2016 and was for a fixed term ending October 31, 2017. Rent was \$2,100.00 per month.

The second tenancy agreement started November 1, 2017 and was for a fixed term ending October 31, 2018. This agreement had a vacate clause indicating that the Tenants had to move out of the rental unit at the end of the fixed term. Below this is a note stating, "Or another 1 yr. lease". Rent was \$2,200.00 per month.

The current tenancy agreement started November 1, 2018 and is for a fixed term ending October 31, 2019. Rent is \$2,300.00 per month.

Tenant J.G. testified as follows. The Tenants are disputing the current rent increase from \$2,200.00 to \$2,300.00 per month. He raised his concerns about the rent increase with the Landlords October 21, 2018. The Tenants signed the current agreement because they do not have another place to go and they wanted to continue the tenancy. The Tenants would have had to leave the rental unit if they did not renew the tenancy agreement.

Tenant J.G. submitted that the rent increases should be fair and in accordance with the *Residential Tenancy Act* (the "*Act*"). He said the Landlords should have provided three months notice of the rent increase as required under the *Act*.

Tenant J.G. testified that he was not aware of the rent increase laws and accepted the terms of the tenancy agreements without knowing the Tenants' rights.

Landlord H.W. submitted that the Tenants signed the new agreement and therefore are bound by the terms of the new agreement. He relied on section 43(1)(c) and 43(2) of the *Act* and submitted that the Tenants are not permitted to dispute the rent increase because they agreed to it in writing. Landlord H.W. argued that the Landlords complied with section 43 of the *Act* in the circumstances.

Landlord H.W. denied that there was a discussion between him and Tenant J.G. in relation to the allowable rent increase amount as stated by Tenant J.G.

Landlord H.W. submitted that the Tenants could have refused to sign the new agreement. He said the Landlords never told the Tenants they would have to vacate the rental unit if they did not sign the new agreement. Landlord H.W. referenced the fact that he would have no right to end the tenancy if the Tenants refused to sign the new agreement. Landlord H.W. said he provided the new agreement to the Tenants on October 13, 2018 to sign.

In reply, Tenant J.G. said this was a continuous tenancy since 2015. He submitted that the Landlords are trying to circumvent the *Act* and allowable rent increases by requiring the Tenants to sign the new tenancy agreement.

### Analysis

Part 3 of the *Act* sets out the allowable rent increases and states:

Timing and notice of rent increases

42 ...

(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.

...

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

...

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Policy Guideline 30 deals with rent increases and states:

#### H. RENT INCREASES AND FIXED TERM TENANCIES

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.

Pursuant to Policy Guideline 30, the change in rent from the second tenancy agreement to the current tenancy agreement is subject to the provisions of the *Act* in relation to rent increases as these were fixed term tenancy agreements with the same Tenants for the same rental unit.

The maximum allowable rent increase for 2018 is four percent. The increase from the second tenancy agreement to the current tenancy agreement was \$100.00 which exceeds the four percent limit.

Regardless of whether the Tenants agreed to this increase, the Landlords did not give the Tenants a notice of rent increase in the approved form three months before the effective date of the rent increase.

Given the above, I find the Landlords failed to comply with Part 3 of the *Act*. Therefore, I find the rent increase from \$2,200.00 to \$2,300.00 is not a rent increase permitted by the *Act*. The rent will remain at \$2,200.00. If the Tenants have paid \$2,300.00 in rent for November and December, the Tenants are entitled to reimbursement for \$100.00 for November and \$100.00 for December. If this is the case, pursuant to section 43(5) of the *Act*, the Tenants are entitled to deduct \$200.00 from one future rent payment.

As the Tenants were successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(a) of the *Act*, the Tenants are entitled to deduct this \$100.00 from one future rent payment.

### Conclusion

The Application is granted. The rent increase from \$2,200.00 to \$2,300.00 is not permitted by the *Act*. If the Tenants have paid \$2,300.00 in rent for November and December, the Tenants are entitled to reimbursement for \$100.00 for November and \$100.00 for December and can deduct \$200.00 from one future rent payment.

As the Tenants were successful in this application, I grant them reimbursement for the \$100.00 filing fee. The Tenants are entitled to deduct this \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 06, 2018

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Residential Tenancy Branch