



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      DRI MNDC FF

### 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of any evidence on file.

### Issues

*Is the rent increase in compliance with the Act?*

*Is the tenant entitled to compensation for past rent increases not in compliance with the Act?*

*Is the tenant entitled to recover the filing fee for this application from the landlord?*

### Background & Evidence

The rental unit is one half of a duplex. The tenancy began on December 1, 2003. The rent at the beginning of the tenancy was \$1050.00. In May 2005, the landlord increased the rent by \$150.00 to \$1200.00. In March 2007, the parties signed a written agreement by which the rent was increased from \$1200.00 to \$1300.00. The tenant signed the written agreement which clearly stipulates the rent was above the allowable increase of 4% in 2007 and agreed to by the tenant. This written agreement further states that all increases are agreed upon because the rent is not increased each year. In March

2009, the rent was increased from \$1300.00 to \$1360.00. In May 2011, the rent increased from \$1360.00 to \$1415.00. In October 2014 the rent increased to \$1475.00 and then in March 2017 it increased to \$1520.00. On April 23, 2017, the parties signed another written agreement by which the tenant agreed to an additional rent increase effective January 1, 2018. The rent was increased from \$1520.00 to \$2000.00. The tenant signed and agreed to this additional increase. The landlord also performed various renovations in exchange for the tenant agreeing to this additional amount.

Since January 1, 2018 the tenant has been paying a monthly rent of \$2000.00. As a result of this dispute, it appears the landlord revised the rent amount payable to \$1941.60 and the tenant paid this amount for December 2018. The landlord has also issued another formal rent increase dated October 30, 2018 by which the rent would be increased from \$1941.60 to \$1990.00 effective February 1, 2019. The amount of this increase is the allowable 2.5% for 2019.

The tenant is claiming an amount of \$6919.76 which she has calculated as compensation owed to her for rent payments made over the 15 year tenancy which were in excess of the allowable rent increase provisions under the Act. The tenant is not disputing or claiming compensation for the increases from \$1200.00 to \$1300.00 in March 2007 and the \$480.00 increase in January 2018. The tenant is however claiming that the January 2018 increase was based upon an illegally raised starting rent amount and the correct amount should have been \$1461.60 plus the \$480.00 increase bringing the rent payable to \$1941.60.

The landlord testified that rather than raise the rent the allowable percentage in each year she made the mistake of raising it by a lump sum amount every second or third year. The landlord argues that nevertheless the tenant agreed in writing to start paying a rent of \$2000.00 effective January 2018. The landlord argues that the starting rent amount recorded in this agreement is inconsequential as the tenant agreed to bring the rent up to \$2000.00 and has been paying that amount since.

### Analysis

Pursuant to section 42 of the Act, 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.

Under this section, a landlord must give a tenant Notice of a Rent Increase at least 3 months before the effective date of the increase and the Notice must be in the approved form.

Pursuant to section 43 of the Act, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulation, ordered by the Director or agreed to by the tenant in writing. The allowable percentage rent increase for the calendar year 2019 is 2.5%.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

I find that the tenant agreed in writing to an additional rent increase making the rent payable under this tenancy agreement \$2000.00 effective January 1, 2018. The tenant has also been paying this amount since this date and as such I find the tenant agreed to and understood that she was agreeing to pay \$2000.00 per month not just a \$480.00 increase from the amount which she calculates as the legal amount before any previous illegal rent increases. As stated in section 7 of the Act, a party claiming damage or loss must do whatever is reasonable to minimize the damage or loss. I find the tenant in this case has not taken reasonable steps to minimize or mitigate her loss. The tenant accepted and paid the rent increases from the landlord which was slightly higher than the allowable percentage for a period of 15 years. The tenant even agreed in writing on two separate occasions that she was accepting a rent increase above the allowable percentage. The first signed agreement was as early as two years into the tenancy and the agreement clearly stipulated the amount agreed to was in excess of the allowable and that the tenant was agreeing to this. Therefore, the tenant was well aware of her rights under the Act and ought to have been aware that other increases were also slightly more than the allowable amount. I find it would have been more reasonable for the tenant to file an application to dispute these increases shortly after they were implemented rather than claim compensation for loss 15 years after the fact. I find the tenant was well aware and agreed to the landlord raising the rent in lump sums every two or three years versus a yearly increase even though not all the increases were agreed to in writing by the tenant.

The tenant's claim for compensation based upon illegal rent increases is dismissed without leave to reapply.

I find the landlord has since agreed to and issued a notice of rent increase based upon a reduced rent amount of \$1941.60 which is now the amount payable under this tenancy agreement until February 1, 2019 at which time it will increase to \$1990.00 as per the rent increase dated October 30, 2018.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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: December 27, 2018

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Residential Tenancy Branch