



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: DRI CNL FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord personally with the Application for Dispute Resolution. The landlord agreed he had received them as stated. The tenant amended their Application on April 10, 2019 to dispute a two month Notice to End Tenancy dated April 8, 2019 to be effective May 30, 2019; the landlord stated the reason to end the tenancy was that he had the permits and approvals to repair the rental unit in a manner that required the rental unit to be vacant.. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To find their 2019 rent increase did not comply with the Act pursuant to sections 42 and 43;
- b) To dispute the Notice to End Tenancy for landlord's use of the property; and.
- c) To recover the filing fee for this application.

### **Preliminary Issue:**

The landlord's name was spelled incorrectly on the Application. The landlord requests it be amended on the Decision and Order. The tenants agreed. The amendment is granted.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that there was an increase in their rent that did not comply with the Act and that they are entitled to recover the filing fee? Are they entitled to relief from the 2 Month Notice to End Tenancy?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said their tenancy commenced July 1, 2016, their rent was \$1500 and they paid a security deposit of \$750. They received a Notice of Rent Increase effective October 2017 which raised their rent to \$1555. On

January 30, 2019, they received another Notice of Rent Increase effective February 1, 2019 which raised their rent to \$1750 (an increase of \$195 per month). They say this amount is illegal and dispute it. The landlord said they were actually paying \$1550, not \$1555 a month but the tenants deny this.

The tenants also dispute the two month Notice to End Tenancy for repairs. When I pointed out to the landlord that as of 2018, a four month Notice to End Tenancy is required pursuant to section 49(6) of the Act, he began describing the problems of this tenancy and stated the tenants did a lot of damage to the house and the neighbours are complaining. I advised him that a tenancy might be ended on a one month Notice to End Tenancy for cause pursuant to section 47 of the Act. He said he plans to pursue this route. The tenants disagreed with his statements but I declined to hear evidence on a hypothetical Notice that might be served in the future.

In evidence is the disputed Notice of Rent Increase, the Two Month Notice to End Tenancy and statements of the parties. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

In section 43, the *Residential Tenancy Act* provides that an increase in rent may only be imposed up to the amount calculated in accordance with the Regulations. I find the amount for 2019 is 2.5%. I find the tenant's rent of \$1555.00 may only be increased by \$38.87 in 2019. Also, I find section 43 requires a landlord to give 3 months Notice of a Rent Increase. I find the landlord's Notice of Rent Increase for 2019 invalid.

The Act states as follows: Sections 42 and 43

*Timing and notice of rent increases*

*42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

*(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.*

*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...

(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.

Therefore I find the maximum increase of rent for the tenant for 2019 should be \$38.87 which would make their rent \$1593.87 **after the landlord serves a three month Notice of Increase stating this amount.** Meanwhile the tenants' rent remains at \$1555.00. If the tenants have paid more than \$1555 per month, they are entitled to deduct it from their rent pursuant to section 43(5) above.

In respect to the Two Month Notice to End Tenancy, I find it is invalid. I note section 49(6) of the Act came into effect on May 17, 2018. This requires a landlord to serve a 4 Month Notice to End Tenancy for repairs that require the unit to be vacant. The Four Month Notice is on Form RTB -29.

**Conclusion:**

I set aside and cancel the Notice of Rent Increase dated January 1, 2019 as it is illegal. I set aside and cancel the Two Month Notice to End Tenancy for repair of the unit as it does not comply with section 49(6) of the Act which requires a Four Month Notice.

I find the tenant entitled to recover their filing fee as they were successful.

**I HEREBY ORDER that the tenant may recover their filing fee by deducting it from their next rental 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 *Residential Tenancy Act*.

Dated: April 30, 2019

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Residential Tenancy Branch