



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** DRI, CNR, FF

### **Introduction**

This hearing dealt with an application by the tenant to dispute the rent increase effective April 01, 2019, to set aside the notice to end tenancy and to recover the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. The tenant was accompanied by his agent.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issue to be Decided**

Is the rent increase in keeping with Legislation? Has the landlord validly issued a notice to end tenancy? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy began in March 2014. The monthly rent as determined by an arbitrator in a previous dispute resolution procedure is \$1,350.00 due on the first of each month. A copy of the decision dated February 21, 2019, was filed into evidence.

On May 05, 2019, the landlord served the tenant with a notice of rent increase. The increase was calculated in accordance with the regulation at the rate of 2.5%.

However instead of the three months' notice the landlord retroactively recorded the effective date as April 01, 2019. The landlord justified the date by testifying that the original notice of rent increase was served on December 26, 2018

As per the decision dated February 21, 2019 the Arbitrator found that the original notice of rent increase was served on December 26, 2018 but was based on rent in the amount of \$1,400.00 and was calculated at a rate of 4%. This rent increase was slated to be effective April 01, 2019. The tenant disputed that notice of rent increase which resulted in a hearing on February 19, 2019 and the decision dated February 21, 2019.

The legislated rate of rent increase for 2019 was originally set at 4% and had been reduced by legislation to 2.5%. The tenant was also not in agreement with the amount of monthly rent indicated on the notice. In the decision dated February 21, 2019 the Arbitrator further found as follows:

*... I find the rent is \$1,350.00 per month, payable on the first of each month.*

*The landlords are at liberty to serve the tenant with a **new notice of rent increase**, increasing the rent in accordance with the 2019 allowable rent increase of 2.5%, on the rent of \$1,350.00.*  
(reproduced as written)

The tenant testified that on May 08, 2019 he received a notice dated May 05, 2019 with a rent increase of 2.5% which was retroactive from April 01, 2019. A handwritten note on the notice indicated that the notice was a revised notice. The landlord also wrote a letter to the tenant dated May 05, 2019 with an explanation that the tenant was in arrears as his rent for April and May 2019 did not include the rent increase.

On May 11, 2019, the tenant made this application to dispute the notice of rent increase as it was received on May 08, 2019 and was asking for the increase to be effective April 01, 2019.

The parties agreed that rent for April was paid in the amount of \$1,350.00. The tenant submitted that on April 30, 2019, he had given the landlord an envelope containing a cheque in the amount of \$1,350.00 which was rent for the month of May 2019. The landlord did not cash the cheque and returned it to the tenant on May 12, 2019.

On May 17, 2019, the landlord served the tenant with a ten-day notice to end tenancy for non-payment of rent in the amount of \$1,383.75. On May 22, 2019, the tenant amended his application to include a dispute of the 10-day notice to end tenancy.

## **Analysis**

Based on the testimony and documents filed into evidence by the parties, I find that the landlord had originally served the tenant with a rent increase that did not comply with the legislated rent increase rate.

However, the original rent increase rate of 4% that was set by legislation was subsequently reduced to 2.5% and it is possible that the landlord may not have been aware of the reduced rate. By serving the notice of rent increase on the tenant on December 26, 2018 to be effective April 01, 2019, the landlord gave the tenant the full three months notice before the rent increase became effective.

Since the rent increase rate was reduced by legislation, the landlord was not required to give the tenant an additional 3 months notice for the rent increase to become effective at the new lower rate of increase.

However, the amount of the monthly rent was also disputed by the tenant and the matter was heard by an Arbitrator on February 19, 2019. The landlord had based the rent increase on a monthly rent of \$1,400.00 and the tenant's position was that the rent was \$1,350.00. As stated above, in a decision dated February 21, 2019, the Arbitrator found that the rent was \$1,350.00 and ordered the landlord to issue a "**new notice of rent increase**" based on the monthly rent of \$1,350.00.

Since the notice dated December 26, 2018 was found to be invalid and since the landlord was ordered to issue a new notice of rent increase, the notice would need to be in compliance with Sections 42 and 43 of the *Residential Tenancy Act*

Sections 42 and 43 address the timing and notice of rent increases and amount of rent increase permitted by legislation.

## **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:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(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.

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

The landlord had the opportunity to serve this new notice of rent increase shortly after he received the decision dated February 21, 2019 and accordingly the rent increase would have taken effect on June 01, 2019. However the landlord chose to wait until May 05, 2019 to serve the tenant with the notice of rent increase and therefore this increase will take effect on September 01, 2019.

Based on my determination of the effective date of the rent increase, the tenant's rent until September 01, 2019 is \$1,350.00 and is due on the first of each month. Effective September 01, 2019, the rent will increase to \$1,383.75.

On May 17, 2019, the landlord served the tenant with a ten-day notice to end tenancy for non-payment of rent in the amount of \$1,383.75. I accept the tenant's testimony that he had given the landlord a cheque in the amount of \$1,350.00 which was returned to him. The landlord agreed that she had returned the rent cheque because it did not include the rent increase.

Based on my determination of the rental amount and the date the increase will take effect, I find that the tenant had paid rent in the correct amount which was rejected by the landlord. Therefore, I find that the notice to end tenancy for non-payment of rent is not valid and must be set aside. Since the tenant is successful in his application, I award the tenant the recovery of the filing fee of \$100.00. The tenant may make a one-time deduction of \$100.00 from a future rent.

**Conclusion**

The notice to end tenancy is set aside and the tenancy will continue as per the tenancy agreement.

The tenant will pay \$1,350.00 for rent each month. Effective September 01, 2019 the monthly rent will be \$1,383.75, due on the first of each month.

The tenant may make a one-time deduction of \$100.00 from a future rent.

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: July 03, 2019

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Residential Tenancy Branch