



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PORT 4 HOMES INC.  
and [tenant name suppressed to protect  
privac

Dispute Codes

CNR, DRI, FFT

## **DECISION**

### Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *MHPTA*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 39;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 36; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issue

At the outset of the hearing the tenants advocate advised that the landlord had withdrawn the notice to end tenancy and no longer seeks an order of possession, the tenant was not opposed to this, accordingly that portion of the tenant's application is dismissed.

### Issue(s) to be Decided

Is a determination required as to whether the landlord increased the rent beyond the allotted amount as noted in the regulation?

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

### Background and Evidence

The tenants advocate made the following submissions. The advocate submits that the landlord has increased the rent each year in accordance with the regulations. The advocate submits that the landlord had given a rental rebate and incentive to this tenant for many years. The advocate submits that without notice, the rental rebate and incentive has been taken away and that the rent payable is higher than what the tenant calculates it should be. The advocate submits that the current rent payable is \$562.44 but it should be \$523.64. The advocate submits that the landlord is using the contract rate as the basis for the increase versus the lower amount of rent incentive level. BN testified that he feels that the lower amount that includes the rent incentive should be the basis for the increase and not the contract rate.

The landlords gave the following testimony. MM testified that the contract rate has always been the basis of how the rent increases were given throughout the tenants 16-year tenure. MM testified that the landlords are under no obligation to give rent incentives, discounts or rebates but the company has tried hard for many years to show their appreciation of good tenants and provide a bit of relief. MM testified that the tenant was not cut off from the incentive program but rather that program was not available this year. MM testified that the contract rate has always been the basis of the agreement and the amount payable. JW testified that all of the documentation submitted by the landlord shows a clear and discernable pattern that the increases were always in accordance with the regulation and that the contract rate was used for the calculation.

### Analysis

Section 36 of the Manufactured Home Park Tenancy Act clearly addresses the matter before me.

**36** (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.**

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-11.]

(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.

In the tenant's own testimony and the submission of the advocate, they agree that the amount of increase over his entire tenancy has complied with the regulations. In addition, the landlord's paperwork is clear and precise that increases have been based on the contract rate amount and that it hasn't varied at any time and that they have complied with the regulations. Based on the documentation before me, I find that the monthly amount payable is as submitted by the landlord of \$562.44. MM testified that if the tenant is able to comply with several stipulations he could be considered for a rental rebate.

Based on the above I must dismiss the tenants' application in its entirety as he has failed to provide sufficient evidence to support his claim.

As the tenant has not been successful in this application, he must bear the cost of the filing fee.

Conclusion

The tenants' application is dismissed in its entirety 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 *Manufactured Home Park Tenancy Act*.

Dated: March 05, 2020

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Residential Tenancy Branch