



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal Lepage Merritt and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 27, 2020 (the "Application"). The Tenant applied to dispute a rent increase, pursuant to the *Residential Tenancy Act* (the "Act").

The hearing was scheduled for 11:00 AM on March 31, 2020 as a teleconference hearing. Only the Tenant appeared at the appointed date and time of the hearing. No one appeared for the Landlord. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant stated that the Application and documentary evidence package was served to the Landlord in person on January 29, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on January 29, 2020. The Landlord did submit some documentary evidence prior to the hearing, however, no one appeared for the Landlord at the time of the hearing to present the evidence for my consideration.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to compensation relating to the Landlord's rent increase, pursuant to Section 42, 43, and 67 of the *Act*?

### Background and Evidence

The Tenant stated that she was meant to take possession of the rental unit on December 15, 2018, however, the move in date was delayed due to the fact that the rental unit was not yet suitable for occupation. The Tenant stated that at that time, the parties agreed that the rent would be \$1,000.00 each month.

The Tenant stated that the parties came together on January 29, 2019 and signed a new tenancy agreement, which was submitted into evidence in support. The Tenant stated that the Landlord had conducted some repairs to the rental unit and that the rent was increased to \$1,100.00 which was due on the first day of each month. The Tenant stated that she paid a security deposit in the amount of \$550.00. The Tenant stated that she moved into the rental unit on February 1, 2019.

The Tenant is disputing the rent increase from the original agreed upon rent in the amount of \$1,000.00 to the amount that was reflected in the tenancy agreement in the amount of \$1,100.00. The Tenant stated that at the start of her tenancy she needed to clean the rental unit and that the Tenant has requested repairs be made to the rental unit for over a year now.

The Tenant is also disputing the notice of rent increase which she received from the Landlord, dated October 1, 2019. The Tenant stated that the Landlord was seeking to raise the rent from \$1,100.00 to \$1,128.50 effective February 1, 2020. The Tenant stated that she is on a fixed income and doesn't feel as though she should have to pay the additional rent, given that the rental unit requires repairs to make the rental unit more liveable.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

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.
- (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.

Section 43 of the *Act* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the tenant in writing.

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

In this case, I accept based on the tenancy agreement provided by the Tenant, that the parties came together and signed a new tenancy agreement on January 31, 2019. According to this tenancy agreement, the Tenant is required to pay rent to the Landlord in the amount of \$1,100.00 each month. As such, I find that the parties agreed to that amount of rent and that the Tenant is required to pay \$1,100.00 to the Landlord each month as indicated in the agreement between them.

The Tenant confirmed that she received a notice of rent increase from the Landlord which is dated October 1, 2019. The notice indicated that the Tenant is required to pay a rent increase of \$28.50, bringing the total amount of rent due to the Landlord in the amount of \$1,128.50 on the first day of each month beginning on February 1, 2020.

I find that the rent increase issued by the Landlord to the Tenant complies with Section 42 of the *Act*. During the hearing, the Tenant did not dispute the amount of the rent increase reflect on the notice, instead, she stated that the increase was disputed based

on her limited ability to pay the increased rent and her displeasure with the condition of the rental unit.

In light of the above, I find that the Tenant is required to pay rent to the Landlord in the amount of \$1,128.50 as of February 1, 2020. I therefore dismiss the Tenant's Application to dispute a rent increase, without leave to reapply. Should the Tenant feel as though the Landlord is not meeting their responsibilities and obligations under the Act in relation to repairing the rental unit, the Tenant is at liberty to reapply for a repair order, pursuant to the *Act*.

### Conclusion

The rent increase served by the Landlord dated October 1, 2019 meets the requirements set out in Section 42 of the *Act*. The Tenant's Application to dispute the rent increase is therefore 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: March 31, 2020

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Residential Tenancy Branch