



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      DRI, CNR-MT, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed that the tenant had moved out on November 27, 2021. As the tenancy had ended, the portions of the tenant's application pertaining to the 10 Day Notice to End Tenancy are cancelled.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord testified that they were unable to serve the tenant with their evidentiary materials as the tenant had moved out. As the landlord's evidence package was not served on the

tenant, the landlord's evidentiary materials were excluded for the purposes of this hearing.

**Issue(s) to be Decided**

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to the monetary order requested?

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

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on June 13, 2020, and continued on a month-to-month basis after June 30, 2021. Monthly rent was originally set at \$900.00 per month, payable on the first of the month. A Mutual Agreement was signed on June 1, 2021 to change the monthly rent to \$1,100.00, effective July 1, 2021.

The tenant filed this application requesting that the additional rent be refunded to the tenant as they feel that the landlords had imposed an illegal rent increase. The tenant testified that they had only signed the Mutual Agreement as the landlords had threatened to evict the tenant even though the tenancy had reverted to a month-to-month tenancy, and the tenant did not know what to do.

The landlords testified that the additional \$200.00 a month was not a rent increase, but additional rent for an additional occupant. The landlords testified that they were informed by a neighbouring tenant that the tenant had allowed an additional occupant to stay there without the landlord's permission. The landlords pointed out that the tenancy agreement includes a clause that stated that the rent would increase by \$200.00 per month for additional occupants, and after the tenant was informed of this, the tenant had agreed to pay the additional \$200.00. The landlords testified that the tenant had only filed the application to dispute this after the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant disputes that they had allowed additional occupants to stay there, and that they often had friends come visit them.

### **Analysis**

In determining whether the landlords are entitled to an additional \$200.00 per month, and whether the tenant is entitled to the additional \$100.00 that she has paid, I refer to sections 13 and 40 of the *Residential Tenancy Act*.

Section 13(2)(iv) of the *Act* states that the tenancy agreement must include “the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies”.

Section 40 of the *Act* clarifies the definition of a "rent increase"

**40** In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

As set out in Section 40, the \$200.00 paid by the tenant is not considered a “rent increase” under the *Act*. Rather, the clause in the tenancy agreement is a requirement under section 13(2)(iv) of the *Act*, to clearly specify the amount the rent would vary, if the rent varies with the number of occupants. The purpose of the clause is to clearly define, to both parties, the amount of rent payable if the number of occupants changes during the tenancy.

In light of the disputed testimony before me, I find that the tenant signed a Mutual Agreement agreeing to pay an additional \$200.00 per month, which is equivalent to the amount stated in the tenancy agreement for additional occupants. I do not find the tenant credible when they stated that they had signed the Mutual Agreement out of duress or coercion. I find that the tenant had paid the additional \$200.00 from July 1, 2021 onwards, and did not file this application until the landlords had served the tenant with a 10 Day Notice to End tenancy for Unpaid rent on November 4, 2021. I find that by signing the Mutual Agreement and paying the additional \$200.00 per month, the tenant acknowledged and accepted the landlords’ assessment of the additional rent under section 13(2)(iv) of the *Act*. Accordingly, I dismiss the tenant’s applications without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was unsuccessful with their application, I find that the tenant is not entitled to recover the

\$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

**Conclusion**

The tenant's entire 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 23, 2021

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Residential Tenancy Branch