



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 03, 2021 (the “Application”). The Tenants applied as follows:

- To dispute a rent increase that is above the amount allowed by law
- To recover the filing fee

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants’ evidence.

Tenant S.N. testified that the hearing package was sent to the Landlord at their residence by registered mail on November 05, 2021. The Tenants submitted a registered mail receipt with Tracking Number 193 on it. I looked Tracking Number 193 up on the Canada Post website which shows the package was delivered November 09, 2021. Tenant S.N. testified that the Tenants’ evidence was not served on the Landlord.

Based on the undisputed testimony of Tenant S.N., registered mail receipt and Canada Post tracking information, I am satisfied the Landlord was served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post tracking information, I find the Landlord received the

package November 09, 2021. I also find the Tenants complied with rule 3.1 of the Rules in relation to the timing of service of the hearing package.

The Tenants were required to serve their evidence on the Landlord pursuant to rules 3.1 and 3.14 of the Rules. The Tenants did not serve their evidence on the Landlord and therefore did not comply with the Rules. Pursuant to rule 3.17 of the Rules, I heard the Tenants on whether their evidence should be admitted or excluded given it was not served as required. Tenant S.N. made submissions about what the evidence included.

Pursuant to rule 3.17 of the Rules, I excluded the Tenants' evidence as I found it would be unfair to consider it when it was not served on the Landlord as required.

As I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to provide relevant evidence and make relevant submissions. I have considered all oral testimony of the Tenants. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Did the Landlord impose a rent increase that is above the amount allowed by law?
2. Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

Tenant S.N. testified as follows.

There was a verbal tenancy agreement between the parties. The tenancy started May 01, 2018 and was a month-to-month tenancy. Rent was \$1,000.00 at the start of the tenancy and increased to \$1,100.00 on March 02, 2019. Rent was due on the first day of each month. The Tenants paid a \$500.00 security deposit.

The Tenants moved out of the rental unit December 01, 2021.

The Tenants are disputing the rent increase from \$1,000.00 to \$1,100.00 on March 02, 2019. The Tenants paid the additional \$100.00 from March 02, 2019 to December 01, 2021. The Tenants did not receive notice of the rent increase imposed March 02, 2019.

I asked the Tenants why they waited more than two years to dispute the rent increase. Tenant S.N. said they were okay with the rent increase because it was “cheap” but then the Landlord wanted to add more and scribbled on their document showing rent payments.

### Analysis

Part 3 of the *Act* governs rent increases and states in part:

#### Rent increases

41 A landlord must not increase rent except in accordance with this Part.

#### 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 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.

#### 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.

Policy Guideline 37 addresses rent increases and states at page 4:

### C. AGREED RENT INCREASE

A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements **must be in writing**, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant. **A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect.** The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant. (emphasis added)

I accept the undisputed testimony of Tenant S.N. that the Landlord increased rent from \$1,000.00 to \$1,100.00, above the allowable amount, on March 02, 2019.

I accept the undisputed testimony of Tenant S.N. that the Landlord did not issue a Notice of Rent Increase in relation to the increase on March 02, 2019.

The Landlord was required to issue a Notice of Rent Increase as stated in Policy Guideline 37. Given the Landlord did not issue a Notice of Rent Increase, the rent increase did not comply with Part 3 of the *Act* and the Landlord was not permitted to increase the rent to \$1,100.00. The Tenants are entitled to recover the amount paid over and above the original \$1,000.00 rent.

However, I find the Tenants failed to mitigate their loss by waiting more than two years to recover the non-compliant rent increase. Parties are expected to know their rights under the *Act* and the Tenants should have raised this issue March 02, 2019 when the rent increase was imposed. I find it unreasonable for the Tenants to have waited more than two years to make the claim thus increasing the claim by hundreds of dollars. Given this, I find it appropriate to limit the amount awarded to one year of payments made over and above the original rent amount. I award the Tenants \$1,200.00.

Given the Tenants were successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are awarded \$1,300.00 and I issue them a Monetary Order in this amount.

### Conclusion

The Tenants are awarded \$1,300.00 and are issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 14, 2022

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Residential Tenancy Branch