



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **TT: CNR OLC DRI**  
                                 **LL: OPC**

### **Introduction**

This hearing dealt with two applications pursuant to the Residential Tenancy Act (the “Act”). The Tenant made one application for:

- cancellation of a Ten Day Notice for Unpaid Rent and/or Utilities dated May 26, 2022 (“10 Day Notice”) pursuant to section 45;
- an order that the Landlords comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or the tenancy agreement pursuant to section 62; and
- an order regarding a rent increase that is above the amount allowed by law pursuant to section 43.

The Landlords made one application for an Order of Possession based on a 1 Month Notice for Cause dated May 3, 2022 (“1 Month Notice”) pursuant 55.

The two Landlords (“BS” and “TS”) and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding for her application and her evidence (“Tenant’s NDRP Package”) on the Landlords by email on May 26, 2022. The Tenant stated the Tenant and Landlords had previously agreed to service of documents on each other by email and the Landlords did not dispute this. The Landlords acknowledged receiving the Tenant’s NDRP Package. I find the Tenant’s NDRP Package was served on the Landlords pursuant to the provisions of sections 88 and 89 of the Act.

BS stated the Landlords served the Notice of Dispute Resolution Proceeding for their application and their evidence ("Landlords' NDRP Package") on the Tenant by email on June 3, 2021. The Tenant acknowledged receipt of the Landlords' NDRP Package. I find the Landlords' NDRP Package was served on the Tenant pursuant to the provisions of section 88 and 89 of the Act.

#### Preliminary Matter – Addition of Claim to Tenant's Application

In the Tenant's Application, the Tenant stated she discovered the Landlords received an unlawful rent increase in 2021 and also in 2016. At the hearing the Tenant stated the Landlords made rent increases that did not comply with the requirements of the Act and, as a result, she was entitled to deduct the overpayments of rent from the renting owing for the month of June 2021 and was seeking the return of the balance of the overpayments from the Landlords. BS admitted the Landlords raised the rent on two occasions and did not serve the Tenant with a Notice of Rent Increase for either of the two rent increases. The Tenant requested that I amend the Tenant's Application so that she could recover any overpayments of rent she paid as a result of the rent increases that did not comply with the Act.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlords served the Tenant with the 10 Day Notice claiming the Tenant owed them \$1,050.00. The Tenant disputed the 10 Day Notice on the basis that she was entitled to apply a portion of the overpayments she previously paid for rent from the amount owing for the June 2022 rent. BS acknowledged the Landlords did not serve the Tenant with Notices of Rent Increase for the two rent increases they imposed on the Tenant.

The Landlords have sought unpaid rent from the Tenant for June 2022. As such, the Landlords knew or ought to have known that they would be required, in order to demonstrate they had cause to end the tenancy pursuant to the 10 Day Notice, to provide an accounting of the rent paid by the Tenant. As such, the Landlords could have reasonably anticipated, after reading the Tenant's Application, that the Tenant would seek the return of any overpayments of rent resulting from the two rent increases they imposed on the Tenant that did not comply with the Act. The Tenant stated she moved out of the rental unit on June 29, 2022 and the Landlords stated the Tenant returned the key for the rental unit on June 30, 2022. As the tenancy has ended, I am unable to grant the Tenant an order that she may deduct the overpayments of rent from future rent to be paid to the Landlords. The Landlords did not object to the proposed amendment to the Tenant's Application. Based on the foregoing, I order the Tenant's Application be amended by the addition of claim for an order regarding a rent increase(s) that are above the amount allowed by law pursuant to section 43 of the Act.

#### Preliminary Matter – Tenant has Vacated Rental Unit

As noted above, the Tenant vacated the rental unit at the end of June 2022. As such, it is unnecessary for me to determine whether the Landlords are entitled to an Order of Possession based on the 1 Month Notice. Based on the foregoing, I dismiss the Landlords' Application without leave to reapply.

#### Issues to be Decided

Is the Tenant entitled to:

- cancellation of the 10 Day Notice?
- an order the Landlords comply with the Act, Regulations and/or tenancy agreement?
- an order regarding a disputed rent increase?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's Application and my findings are set out below.

The parties agreed the tenancy commenced on February 1, 2013, on a month-to month basis, with rent of \$850.00 payable on the 1<sup>st</sup> day of each month. The Tenant was to pay a security deposit of \$425.00 by January 18, 2013.

The Tenant admitted she did not pay the rent for June 2021. The Tenant stated the Landlords increased the rent from \$850.00 per month on October 1, 2016 to \$950.00 per month and then increased the rent from \$950.00 on June 1, 2021 to \$1,050.00 per month. The Tenant stated the Landlords never served her with a Notice of Rent increase for either of the two rent increases the Landlords imposed on her. The Tenant stated that, as the rent increases did not comply with the requirements of the Act, she was entitled to deduct the rent for June 2021 from the overpayments and to recover the balance of the overpayments.

The Landlords admitted they received \$100.00 per month for 56 months for the period from October 1, 2016 and \$200.00 per month for 12 months for the period June 2021 to May 2022. The Landlords provided the following accounting of the amount of rent owing for each month of the tenancy of \$850.00 per month pursuant to the terms of the tenancy agreement and the amounts paid by the Tenant from October 2016 through to June 2021:

<b>Date</b>	<b>Amount of Rent Without Rent Increases</b>	<b>Amount Paid</b>	<b>Balance</b>
October 2016	\$850.00	\$950.00	-\$100.00
November 2016	\$850.00	\$950.00	-\$200.00
December 2016	\$850.00	\$950.00	-\$300.00
January 2017	\$850.00	\$950.00	-\$400.00
February 2017	\$850.00	\$950.00	-\$500.00
March 2017	\$850.00	\$950.00	-\$600.00
April 2017	\$850.00	\$950.00	-\$700.00
May 2017	\$850.00	\$950.00	-\$800.00
June 2017	\$850.00	\$950.00	-\$900.00
July 2017	\$850.00	\$950.00	-\$1,000.00
August 2017	\$850.00	\$950.00	-\$1,100.00
September 2017	\$850.00	\$950.00	-\$1,200.00
October 2017	\$850.00	\$950.00	-\$1,300.00
November 2017	\$850.00	\$950.00	-\$1,400.00
December 2017	\$850.00	\$950.00	-\$1,500.00
January 2018	\$850.00	\$950.00	-\$1,600.00
February 2018	\$850.00	\$950.00	-\$1,700.00
March 2018	\$850.00	\$950.00	-\$1,800.00

April 2018	\$850.00	\$950.00	-\$1,900.00
May 2018	\$850.00	\$950.00	-\$2,000.00
June 2018	\$850.00	\$950.00	-\$2,100.00
July 2018	\$850.00	\$950.00	-\$2,200.00
August 2018	\$850.00	\$950.00	-\$2,300.00
September 2018	\$850.00	\$950.00	-\$2,400.00
October 2018	\$850.00	\$950.00	-\$2,500.00
November 2018	\$850.00	\$950.00	-\$2,600.00
December 2018	\$850.00	\$950.00	-\$2,700.00
January 2019	\$850.00	\$950.00	-\$2,800.00
February 2019	\$850.00	\$950.00	-\$2,900.00
March 2019	\$850.00	\$950.00	-\$3,000.00
April 2019	\$850.00	\$950.00	-\$3,100.00
May 2019	\$850.00	\$950.00	-\$3,200.00
June 2019	\$850.00	\$950.00	-\$3,300.00
Jul 2019	\$850.00	\$950.00	-\$3,400.00
August 2019	\$850.00	\$950.00	-\$3,500.00
September 2019	\$850.00	\$950.00	-\$3,600.00
October 2019	\$850.00	\$950.00	-\$3,700.00
November 2019	\$850.00	\$950.00	-\$3,800.00
December 2019	\$850.00	\$950.00	-\$3,900.00
January 2020	\$850.00	\$950.00	-\$4,000.00
February 2020	\$850.00	\$950.00	-\$4,100.00
March 2020	\$850.00	\$950.00	-\$4,200.00
April 2020	\$850.00	\$950.00	-\$4,300.00
May 2020	\$850.00	\$950.00	-\$4,400.00
June 2020	\$850.00	\$950.00	-\$4,500.00
July 2020	\$850.00	\$950.00	-\$4,600.00
August 2020	\$850.00	\$950.00	-\$4,700.00
September 2020	\$850.00	\$950.00	-\$4,800.00
October 2020	\$850.00	\$950.00	-\$4,900.00
November 2020	\$850.00	\$950.00	-\$5,000.00
December 2020	\$850.00	\$950.00	-\$5,100.00
January 2021	\$850.00	\$950.00	-\$5,200.00
February 2021	\$850.00	\$950.00	-\$5,300.00
March 2021	\$850.00	\$950.00	-\$5,400.00
April 2021	\$850.00	\$950.00	-\$5,500.00
May 2021	\$850.00	\$950.00	-\$5,600.00
June 2021	\$850.00	\$1,050.00	-\$5,800.00
Jul 2021	\$850.00	\$1,050.00	-\$6,000.00
August 2021	\$850.00	\$1,050.00	-\$6,200.00
September 2021	\$850.00	\$1,050.00	-\$6,400.00
October 2021	\$850.00	\$1,050.00	-\$6,600.00
November 2021	\$850.00	\$1,050.00	-\$6,800.00

December 2021	\$850.00	\$1,050.00	-\$7,000.00
January 2022	\$850.00	\$1,050.00	-\$7,200.00
February 2022	\$850.00	\$1,050.00	-\$7,400.00
March 2022	\$850.00	\$1,050.00	-\$7,600.00
April 2022	\$850.00	\$1,050.00	-\$7,800.00
May 2022	\$850.00	\$1,050.00	-\$8,000.00
June 2022	\$850.00	\$0.00	-\$7,150.00
<b>Totals:</b>	\$59,500.00	\$66,650.00	-\$7,150.00

Based on the accounting, the Landlords received overpayments of rent of \$8,000.00 as of May 2022. As such, after deducting the rent for June of \$850.00, the Landlords have received overpayments of rent of \$7,150.00.

### Analysis

Sections 46 and 53 of the Act state:

- 46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*
- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

[emphasis in italics]

The Landlords stated they served the 10 Day Notice on the Tenant's by email on May 26, 2022. Pursuant to section 44 of the *Regulations*, the Tenant was deemed to have received the 10 Day Notice on May 29, 2020, being three days after it was emailed. Pursuant to section 46(4) of the Act, the Tenant had until June 4, 2022 to make the Application to dispute the 10 Day Notice. The records of the Residential Tenancy Branch disclose the Application was made on May 26, 2022. As such, the Application was made within the 5-day dispute period.

Sections 42, 43 and 43.1 of the Act state:

- 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.*
- 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.
- (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 2006-35-66.]
- (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.*
- 43.1(1) For the purposes of this section, a date that applies under section 90 (a), (b), (c) or (d), or that is prescribed under section 97 (2) (p), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.

- (2) A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice
- (a) is received before September 30, 2021, as determined under subsection (1) of this section, and
  - (b) has an effective date that is after March 30, 2020 and before January 1, 2022.

[emphasis in italics added]

*Residential Tenancy Policy Guideline 37* (“PG 37”) provides guidance on the procedures for a landlord to seek a rent increase to a tenancy agreement. PG 13 states in part:

1. Permitted Rent Increases

Under section 36 of the Manufactured Home Park Tenancy Act (MHPTA) and section 43 of the Residential Tenancy Act (RTA), a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations (“annual rent increase”)
- agreed to by the tenant in writing (“agreed rent increase”)
- ordered by the director on an application in the circumstances prescribed in the regulations (“additional rent increase”)

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 in italics added]

Based on the testimony of the parties, I find the tenancy agreement stated the tenancy commenced on February 1, 2013 with rent of \$850.00 payable on the 1<sup>st</sup> day of each



month. The Landlords did not submit into evidence a signed consent from the Tenant to either of the two rent increases. BS admitted the Landlords did not serve the Tenant with a Notice of Rent Increase for the rent increase on October 1, 2016 or the rent increase on June 1, 2021. As such the Landlords did not comply with the requirements of subsection 42(2) or 42(3) of the Act. Although the Tenant may have verbally agreed to the increase, or alternatively, acquiesced in the rent increase, the Landlords nevertheless collected amounts in excess of the rent required to be paid by the Tenant pursuant to the tenancy agreement without complying with the requirements of subsections 42(2) or 42(3) of the Act.

Based on the testimony of the parties, I find that the Landlords were not permitted to increase the rent paid by the Tenant on October 1, 2016 or June 1, 2021. I find that for the entire duration of this tenancy, the Landlords were only entitled to collect \$850.00 per month from the Tenant. As a result of the Landlords collected \$8,000.00 in overpayments of rent from October 2016 through to May 2022 inclusive. Pursuant to section 43(5), the Tenant was entitled to deduct \$850.00 from the \$8,000.00 overpayment she paid the Landlords as of May 2021 as payment for the rent she owed for June 2021. As such, the 10 Day Notice was not issued for a valid reason. Based on the foregoing I cancel the 10 Day Notice.

After the deduction of the \$850.00 for the rent for June 2022, the Landlords owe the Tenant for \$7,150.00 for overpayment of rent pursuant to section 43(5) of the Act. I find that the Tenant is entitled to recover the rent increases paid by the Tenant to the Landlords. As such, I order the Landlords pay the Tenant \$7,150.00 pursuant to section 67 of the Act.

As the Tenant was successful in the Application, I find that the Tenant is entitled to recover the \$100.00 filing fee from the Landlords pursuant to section 72 of the Act.

### Conclusion

The Landlords are ordered to pay the Tenant the sum of \$7,250.00 calculated as follows:

<b>Description</b>	<b>Amount</b>
Compensation awarded to Tenant	\$7,150.00
Recovery of Filing Fee of Application	\$100.00
<b>Total</b>	<b>\$7,250.00</b>

The Tenant is provided with this Order on the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: July 22, 2022

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Residential Tenancy Branch