



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **DRI**

### Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to dispute a rent increase that is above the amount allowed by law pursuant to Section 43 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

On September 26, 2022, the parties executed form #RTB-51 Address for Service designating email addresses for service to the parties. Rules of Procedure 10 and Section 43(1) of the *Residential Tenancy Regulation* (the "Regulation") allows service via email if an email address was provided for this purpose. Policy Guideline #12 says that by providing an email address for service purposes, a person agrees that important documents pertaining to their tenancy may be served on them by email.

The Tenant confirmed that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing by email on September

29, 2022 (the “NoDRP package”). The Tenant uploaded copies of the sent email to the Landlord. I find that the Landlord was deemed served with the NoDRP package on October 2, 2022, in accordance with Sections 43(2) and 44 of the Regulation.

### Issue to be Decided

Is the Tenant entitled to dispute a rent increase that is above the amount allowed by law?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this tenancy began as a fixed term tenancy on October 1, 2010. The fixed term ended on September 30, 2011, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,435.00 payable on the first day of each month. A security deposit of \$600.00 was collected at the start of the tenancy and the Tenant believes is still held by the Landlord.

The Tenant testified that she pays her rent personally on the first of the month in the Landlord’s office on their debit machine. On September 1, 2022, the Tenant went in to pay her rent and the Landlord verbally advised her that her rent had been increased on January 1, 2022 from \$1,414.00 to \$1,435.00.

On September 2, 2022, the Tenant emailed the Landlord acknowledging that he had verbally told her about her rent increase, but because the Tenant had not received an official notice, she asked that the Landlord give this to her.

On September 2, 2022, the Landlord subsequently sent the Tenant the rent increase notice. It was dated September 24, 2021. The Landlord replied to the Tenant’s email stating that a notice was delivered through her mail slot in September 2021. The Tenant denies receiving this notice.

On July 4, 2022, the Landlord executed a BC Ministry Proof of Rent – Landlord Declaration stating the Tenant’s monthly rent is \$1,414.00.

The Landlord never told the Tenant that she is not paying the correct amount of rent for the first eight months of 2022. She testified that she always goes in personally and pays her rent using the Landlord's debit machine. The Landlord told the Tenant she owes \$189.00 (\$21.00 X 9 months) which represents the rent increase amount she had not received in 2021 for those first nine months of 2022.

On September 26, 2022, the Landlord issued a second rent increase that would be effective January 1, 2023 from \$1,435.00 to \$1,463.00.

The Tenant does not dispute the rent increase, but states it must be applied in accordance with the timelines prescribed by the Act. As she received the notice in September 2022, the first rent increase is effective January 2023. The Tenant asserts that the second rent increase is not applicable as the Landlord must not impose a rent increase for at least 12 months after the last rent increase.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.***

The Tenant denies receiving form #RTB-7-Notice of Rent Increase in September 2021. The Landlord told the Tenant the notice was put through her mail slot. The Landlord did not upload evidence of proof of service of this notice. The Landlord never told the Tenant throughout the first eight months of 2022 that she was paying the wrong amount of rent. On July 4, 2022, the Landlord declared to the province that the Tenant's monthly rent amount was \$1,414.00. On September 2, 2022, the Landlord re-sent the first rent increase notice to the Tenant by email.

I find, based on the undisputed evidence of the Tenant, that the Tenant received the first rent increase notice on September 2, 2022. Section 42(2) of the Act states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. I find the first notice came into effect on January 1, 2023, and the new rent amount is now \$1,435.00. The Landlord is not permitted to impose a rent increase for at least 12 months after this first rent increase pursuant to Section 42(1) of the Act.

I find the second rent increase notice dated September 26, 2022 is not valid.

### Conclusion

The Tenant's application is granted.

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 30, 2023

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Residential Tenancy Branch