



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNR, DRI

### Introduction

The tenant applied on March 23, 2023:

- (i) for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 39 of the *Manufactured Home Park Tenancy Act* (the “Act”); and
- (ii) to dispute a rent increase that is above the amount allowed by law under section 36 of the Act.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Was a rent increase implemented contrary to the Act?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began February 1, 2009. Rent is \$450.00 due on the first day of the month.

The tenant affirmed that:

- the tenant had been paying an extra \$100.00 per month (total payment of \$550.00 per month) from July 2022 to February 2023.
- there was no written agreement signed by the tenant documenting the rent increase.
- the tenant did not receive a Notice of Rent Increase from the landlord.

## Analysis

As the onus is on the landlord to prove the validity of the Notice and the landlord has not attended the hearing to substantiate the Notice, I am cancelling the Notice.

Section 36 of the Act states that a landlord may only impose a rent increase up to the amount calculated in accordance with the *Manufactured Home Park Tenancy Regulation* (the “Regulation”). Section 32 of the Regulation provides that, in relation to a rent increase with an effective date on or after January 1, 2022 and before January 1, 2023, a landlord may impose a rent increase that is no greater than 1.5% plus the proportional amount. The proportional amount is defined under the Regulation as the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park.

The tenant's evidence is that the tenant had been paying an extra \$100.00 per month (total payment of \$550.00 per month) from July 2022 to February 2023. This is close to a 22% rent increase, which is higher than the amount allowed by law.

According to RTB Policy Guideline 37B, in order for an agreement to a rent increase that is greater than the amount allowed by law to be valid, such agreement must:

- be in writing;
- clearly set out the rent increase (for example, the percentage increase and the amount in dollars);
- clearly set out any conditions for agreeing to the rent increase;
- be signed by the tenant; and
- include the date that the agreement was signed by the tenant.

RTB Policy Guideline 37B further states that a Notice of Rent Increase must 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.

The tenant's evidence is that (i) there was no written agreement signed by the tenant documenting the rent increase; and (ii) the tenant did not receive a Notice of Rent Increase from the landlord at any point. Based on this, I find that the rent increase was implemented contrary to the Act. As a result, I find that rent remains at \$450.00 per month and the tenant overpaid rent by paying an extra \$100.00 per month from July

2022 to February 2023 (total overpayment of \$800.00). Therefore, the tenant is owed \$800.00.

Based on the above and pursuant to section 65(2) of the Act, the tenant is ordered to withhold \$800.00 in rent for recovery of the overpayments.

### Conclusion

The tenant's application is granted and the tenancy shall continue until it is ended in accordance with the Act.

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

Dated: May 17, 2023

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Residential Tenancy Branch