



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      DRI FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants to dispute a rent increase.

The Tenants and the Landlord attended the hearing and provided affirmed testimony. The Landlord also attended the hearing. The Landlord confirmed receipt of the Tenant’s application and evidence package, and did not take issue with service of those documents. The Landlord did not serve his documentary evidence, and as a result, I find it is not admissible.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order due to an unlawful rent increase?

### Background and Evidence

The Tenants stated that they moved into the rental unit around March of 2020, and sometime around January of 2022, the Tenants received a text message from the Landlord that rent would be increased from \$1,250.00 to \$1,500.00 starting March 22, 2022. The Tenants stated that around March 17, 2022, the Landlord gave them a new

tenancy agreement to sign, which they did, for the increased amount. A copy was provided into evidence.

The Tenants stated that they never received any formal notice of rent increase, other than the text message, followed by the new tenancy agreement.

The Landlord does not dispute the above, and pointed out that the Tenants agreed to the increase, and signed the new tenancy agreement.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

I turn to the Tenant's application to recover rent that was overpaid due to an unlawful rent increase.

Part 3 of the Act and Policy Guideline 37 to the Act explain the requirements a landlord has to follow in order to affect a legal rent increase.

I note the following portions of the Act:

**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.*

[...]

*(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.*

I note the Tenants agreed to the rent increase in writing, by signing a new tenancy agreement. However, I turn to *Policy Guideline 37B: Agreed Rent Increase*:

**B. 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,*
- 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.*

**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.**

*A tenant cannot dispute an amount they agreed to in writing. A tenant can dispute an agreed rent increase if it was not imposed in compliance with the timing and notice provisions or if the other conditions of the rent increase were not met.*

I find the Landlord failed to fill out and serve a proper Notice of Rent Increase, alongside the new tenancy agreement, as outlined above. I find the rent increase imposed was improper, and not in compliance with the guidelines.

For the above reasons, I find the rent increase from \$1,250.00 to \$1,500.00 which the Tenants paid for 12 months (from March 2022 – March 2023), was unlawful, and not in compliance with the Act. I find the Tenants are entitled to recover the rent overpayments of \$250.00 per month x 12 = \$3,000.00.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I

also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

### Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of \$3,100.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: June 20, 2023

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Residential Tenancy Branch