

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Tenant filed their application on October 6, 2023. The Tenant seeks:

- Cancellation of the Landlord’s 10 Day Notice for Unpaid Rent (the Notice).
- A monetary order for the cost of emergency repairs to the Rental Unit.
- A monetary order for compensation for damage or loss under the *Act*, the *Regulation*, or tenancy agreement.
- To dispute the Landlord’s rent increase.
- An order requiring the Landlord to comply with the *Act*, *Regulation*, or tenancy agreement.

The Landlord filed their application on October 21, 2023, and seeks the following:

- An order of possession pursuant to the Notice.
- A monetary order for unpaid rent and utilities.

Both parties acknowledged being served with their counterparty’s application and evidence by registered mail, in accordance with the *Act*.

Background and Evidence

The parties agreed that this tenancy began on January 1, 2016, with a starting rent of \$1,700.00, due on the first of every month, and a security deposit of \$850.00. The parties agreed that the Tenant is responsible for 80% of utility costs.

The Landlord testified that they increased the Tenant’s rent, by agreement from the Tenant, as follows:

	01-Jan-16	01-Jan-19	01-Jan-22	01-Feb-23
Rent	\$1,700.00	\$2,000.00	\$2,200.00	\$2,800.00
Increase \$		\$300.00	\$200.00	\$600.00
Increase %		17.6%	10.0%	27.3%
Number of months increase paid		57	21	8
Rent increase collected		\$17,100.00	\$4,200.00	\$4,800.00

The Landlord testified that they have never given the Tenant a prescribed Residential Tenancy Branch Notice of Rent Increase form.

The Landlord testified that every rent increase has been with full agreement from the Tenant. The text messages related to the rent increases were provided.

The Tenant testified that they agreed to every rent increase because they did not know their rights under the *Act* and because they assumed they had no other choice but to accept the Landlord's rent increases.

The parties agreed that the Tenant has not paid their October and November 2023 rent. The Tenant testified that they do not dispute that they owe rent, but they believe the previous rent increases have been illegal and that is why they decided to withhold rent.

The parties agreed that the Landlord served the Tenant with the Notice on October 4, 2023. The Notice cites unpaid rent and utilities for the month of October 2023, in the amounts of \$2,800.00 and \$141.25 respectively. On the Notice, the Landlord has indicated that they sent a written demand to the Tenant for unpaid utilities on October 1, 2023.

The Landlord seeks \$320.95 from the Tenant in unpaid utility fees for the months of October and November 2023. The Tenant agreed that they owe the \$320.95 sought and offered to pay the Landlord in full, which the Landlord accepted.

Analysis

- **Did the landlord collect an unlawful rent increase?**

Per section 41 of the *Act*, a landlord must not increase rent except in accordance with Part 3 of the *Act*. As mentioned in the Residential Tenancy Branch's Policy Guideline 37, section 43 of the *Act* allows a landlord to impose a rent increase only up to an amount that is:

- calculated in accordance with the regulations,
- agreed to by the tenant in writing, or
- as ordered by the director on an application in the circumstances prescribed in the regulations.

Policy Guideline 37 further states that the "landlord must give the tenant a completed Notice of Rent Increase form at least three months before the effective date of the rent increase." A tenant may voluntarily agree to a rent increase that is greater than the

maximum annual rent increase and a “Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect.”

Furthermore, agreements for rent increase must be:

- 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.

In this case, the Landlord has never served the Tenant with a Notice of Rent Increase form. The text messages did not clearly set out the conditions of the increase (in fact, what was agreed to by way of text was modified orally in the case of the 2022 Rent Increase) and the agreements were not signed by the Tenant.

The rent increases are of no force or effect because the Landlord did not comply with the timing and notice provisions of the *Act*. A rent increase cannot go into effect until the Landlord has issued a prescribed Notice of Rent Increase form, three full months in advance of any rent increase.

Section 5 of the *Act* states that the *Residential Tenancy Act* and the *Residential Tenancy Regulation* cannot be avoided by any party to a tenancy agreement. Any attempt to avoid or contract out of the above legislations is of no force or effect.

I find that the Landlord collected a rent increase that is not in compliance with the *Act*.

Under section 41 of the *Act*, I order the monthly rent for this tenancy is \$1700.00.

Under section 43(5) of the *Act*, I order the following rent increases are recoverable by the Tenant:

- \$10,800.00 for the \$300.00 increase, imposed on January 1, 2019.
- \$4,200.00 for the \$200.00 increase, imposed on January 1, 2022.
- \$4,800.00 for the \$600.00 increase, imposed on February 1, 2023.

The Tenant has already withheld \$3,400.00 thus, the total amount of rent increases the Tenant is entitled to recover is \$22,700.00 ((10,800+4,200+4,800) – 3,400).

- **Should the Landlord's 10 Day Notice be canceled?**

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 43(5) of the *Act* states that if a landlord collects a rent increase that does not comply with the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase. The Tenant in this case decided to deduct some of the excess increases, or \$3,400.00, from their rent in the months of October and November 2023.

However, the Landlord has also cited unpaid utilities as cause to end the tenancy. Under section 46(6) of the *Act*, the Landlord may treat unpaid utilities as unpaid rent if the utility charges remain unpaid more than 30 days after the tenant is given a written demand for payment of them. The Landlord only provided a written demand three days prior to issuing the Notice. Therefore, the unpaid utilities cannot be treated as unpaid rent for the purposes of issuing a notice to end tenancy. The Notice is canceled, and the tenancy continues until ended in compliance with the *Act*.

The Tenant however agreed that they owe this amount and agreed to pay the Landlord \$320.95 in unpaid utility charges.

- **Does the Landlord owe the tenant for the cost of emergency repairs?**

During the hearing, the parties agreed to settle the issue of emergency repairs. The Landlord agreed to pay the Tenant \$871.40 for the cost of repairs the Tenant made to a washing machine.

Conclusion

The monthly rent is \$1,700.00 until it is increased in compliance with the *Act* and *Regulations*.

The Landlord has not complied with the requirement for rent increases and the Tenant is entitled to recover \$22,700.00.

The Notice to end the tenancy is canceled.

The Landlord is entitled to \$320.95 in utility costs.

The Tenant is entitled to \$871.40 in repair costs.

Monetary Award to Tenant	Amount
Overpaid rent	\$22,700.00
Washing machine repair cost	\$871.40
Less unpaid utilities to the Landlord	-\$320.95
Total Amount	\$23,250.45

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: November 14, 2023

Residential Tenancy Branch