



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR CNC 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 multiple issues under the Act.

The Tenant and Landlord appeared for the hearing and provided affirmed testimony. Both parties confirmed receipt of each other’s evidence packages.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence on the issue of the rent increase only, make submissions to me, and cross examine the other party on the evidence provided.

### Preliminary Matters

The Landlord confirmed that she has since sold the rental property, and is no longer the owner. As such, she wishes to withdraw and cancel the Notices to End Tenancy issued thus far. Accordingly, I allow the withdrawal of all Notices to End Tenancy. The remainder of this decision will focus on the Tenant’s application to dispute the rent increase and to obtain a monetary order based on rent overpayments.

### Issue(s) to be Decided

- Has the Landlord followed the rent increase provisions of the Act?

### Background and Evidence

The Tenant filed her application to recover \$280.00 in rent that she feels she overpaid due to the unlawful rent increase she started paying in August 2021. The Tenant confirmed that she paid \$520.00 in rent per month leading up to the August 2021 increase, then starting August 2021, she started paying \$530.00. The Tenant paid this amount until November 2023, and stated that she paid this amount for 27 months. The Tenant stated that it was not until she received another rent increase in the fall of 2023 that she started to look into the legality of the previous rent increase, and she found out it was unlawful. The Tenant denies coming to any sort of agreement with the Landlord with respect to the rent increase in 2021.

The Landlord stated that she has been more than fair over the years and has only raised rent a couple times in many years. The Landlord stated that in August 2021, the Tenant agreed to the increased rent, and paid it without issue.

### Analysis

Part 3 (Sections 40 through 43) of the Act and Part 4 (Sections 22 and 23) of the Regulations provide for rent increases. The Act provides that any rent increase must be accomplished by the landlord serving the tenant with a Notice of Rent Increase form and serving it to the tenant at least three months before the rent increase is to take effect. The Act also provides that the rent must not be increased by more than the allowable "annual rent increase" unless the landlord has the tenant's written consent or the authority of an Arbitrator pursuant to an Application for Additional Rent Increase.

My focus in this decision is whether or not the rent increase from August 2021 was lawful, and whether the Tenant is entitled to a monetary order as a result of amounts she paid after receiving that rent increase. Regardless of the fact that the Landlord chose not to give rent increases each year, over the years, I find the Landlord was not entitled to issue a rent increase for 2021. The allowable rent increase for 2021 was 0%. I find the rent increase was unlawful. I note the Tenant was unaware of the illegality of this rent increase until this fall, but I also find that simple payment of the rent increase does not constitute consent to the increase in and of itself. In this case, I find there is insufficient evidence that the Tenant agreed to the rent increase, as that was not done in writing, and the Tenant denies agreeing to it. I hereby cancel the rent increase from 2021, and the one issued more recently as well, since it was issued with amounts that were based off an illegal increase from 2021. I find both rent increases are null and void, and rent will remain at \$520.00 until such time as it is legally increased.

The Tenant is entitled to recover her rent overpayments of \$270.00, for the 27 months she overpaid, starting August 2021.

Also, I award the recovery of one filing fee paid by the Tenant, as she did not need to file 3 applications, and could have amended the first application for free. I award \$100.00, plus \$270.00.

### Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$370.00**. This order must be served on the Landlords. If the Landlords fail 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: December 14, 2023

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Residential Tenancy Branch