



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      ADR

### **Introduction**

This hearing was convened in response to the landlord's application seeking an additional rent increase.

Both parties appeared at the hearing on both days and gave evidence under oath.

### **Issue(s) to be Decided**

Has the landlord met the burden of proving his claim?

### **Background and Evidence**

At the hearing of this matter the landlord submitted that in addition to seeking to increase the rent in an amount which exceeds the current allowable amount, the landlord is also seeking to reinstate the usual rent which was previously ordered reduced.

Although the landlord did not make a separate application seeking the reinstatement of the usual rent payable, I find that in making this application seeking to increase the rent from \$850.00 (the usual amount payable) to \$1,400.00 that the tenants have had Notice that the landlord was also seeking to reinstate the former rental amount. I am therefore prepared to decide this claim in addition to the claim for the additional rent increase.

### **Reinstatement of Usual Amount of Rent**

At a hearing held on February 3, 2012 under Residential Tenancy Branch File No. 782568 an Arbitrator ordered:

**I ORDER THE LANDLORD** to investigate the tenants concerns with the above areas of the rental unit and affect any necessary repairs to maintain the unit and ensure the unit complies with the health, safety and housing standards required

by law and make the unit suitable for occupation by the tenants. The landlord must comply with this Order within One Month of receiving this Decision.

With regard to the tenants application to reduce their rent for repairs not completed by the landlord; As the landlord would have been aware that some of these repairs were required from conversations with the tenants and having sent roofing contractors to the property **I ORDER THE TENANTS** to reduce their rent by **\$200.00 per month** until the landlord takes steps to remedy the repairs required in the property or until such a time as the tenancy ends.

At another hearing held on July 5, 2012 under file No. 535317 the same Arbitrator made the following findings:

I find the tenants are entitled to pay the reduced rent of \$600.00 for June, 2012 as ordered at the hearing held in May, 2012. The tenants are also entitled to continue to pay the reduced rent of \$650.00 as ordered at the hearing held in February, 2012 until the landlord has complied with s. 32 of the *Act* and made repairs to the deck, the roof, the door and investigated the problems with the windows.

The landlord now states that the repairs to the deck, the roof, the door have been done and the problems with the windows has been investigated and it has been found that the windows are functioning properly. The landlord therefore seeks to have the rent returned to \$850.00 per month.

The tenants agree that repairs to the roof and patio have been completed. The tenants say that new wheels were never installed on the patio door and that only a small screw was installed on the door. The tenants also say the leak in the second bedroom was never fixed and the window is still mildewing.

The landlord reiterated that repairs as stipulated in the Arbitrator's Order have been completed. The landlord submitted evidence that he spent \$2,500.00 to rebuild the deck and reroofing commenced on October 1, 2012 at a cost of \$11,144.00 and that the patio door is now functioning properly. The landlord states he was only required to investigate the windows and that has now been done and the condensation occurring is normal. The landlord provided a report in this regard.

**Analysis and Findings – Reinstatement of Usual Amount of Rent**

With respect to the return to the original rental amount of \$850.00 I find this to be appropriate in the case. The landlord has provided evidence of the repairs performed and I am satisfied that the bulk of the repairs have been complete and the rental reduction should cease immediately with full rent of \$850.00 becoming payable effective March 1, 2013.

**Additional Rent Increase**

The landlord pointed out that the Arbitrator is required to consider a number of factors when deciding whether an additional rent increase is appropriate as set out in the Residential Tenancy Act Regulation:

- (3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):
  - (a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;
  - (b) the rent history for the affected rental unit in the 3 years preceding the date of the application;
  - (c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;

The landlord testified that he purchased the property in 2002 at which time this portion of the rental building consisted of two separate units. This tenancy also commenced in 2002 with these tenants renting the upper suite which was a two-bedroom unit. The tenants were paying a rental sum which was appropriate for a two-bedroom unit and other tenants rented the two-bedroom lower suite at a rental rate of \$1,000.00 per month. The landlord was therefore receiving \$1,850.00 for the two units (without giving consideration to the rental discount these tenants had been awarded).

The landlord submits that in December 2011 the City of Kelowna advised the landlord that having the rental unit divided into two suites did not comply with 2006 British Columbia Building Code. The landlord was required to obtain a Building Permit to perform renovations to have the building meet the code. The landlord submitted invoices for the work performed to bring the rental unit into compliance with the Code.

The landlord has submitted the opinion of a property manager who has advised that a rent between \$1,400.00 to \$1,600.00 per month plus utilities is appropriate for this rental unit as it now is. With the property manager's report the landlord has included summaries of the comparable properties in the area. The landlord is requesting that the rent be increased to \$1,400.00 per month plus utilities.

The tenants do not agree with the rent increase. The tenants say they have no desire to occupy the lower portion of the rental unit and that the landlord should have known from the beginning that the basement suite was illegal. The tenants state that the landlord has already earned more for the rental unit than he should have as he was receiving \$1,000.00 per month for the basement suite which was illegal and never should have existed.

The tenants say they have had their rent increased twice during their tenancy which began in 2002 resulting in their rent increasing from \$650.00 to \$850.00. The tenants say they paid these increases because they were reasonable however they have only ever wanted to rent the upper portion of the house which is a two-bedroom suite not a four-bedroom suite. The tenants say they do not believe they should be forced to pay more because the landlord was forced to make the rental unit "...become legal..."

The landlord responded that the request from the City of Kelowna came as a surprise and he had no idea that the basement suite was not up to the building code. The landlord testified that he had previous dealings with the City of Kelowna during which time they never mentioned that there was a problem with the basement suite. The landlord stated that in one instance he was required to upgrade the electrical system for the rental building and he separated the two electrical systems between the suites paying \$5,000.00 for the work. The landlord says that if he had known the suite was illegal and the unit should have been one dwelling he would not have spent \$5,000.00 to provide two separate electrical services for the units.

The tenant responded that the electrical issue came up because the electrical system was dangerous and the City Inspector made the landlord separate the electrical to the units. The tenants submit that the landlord should have known when he bought this place that the suite was illegal and the landlord's own sister who previously rented the place knew it was illegal.

## **Analysis and Findings**

First, I will consider item (3)(b) as set out above. I find that there has been insufficient evidence that there have been unusual factors with respect to the rent history of this unit. There have been no other extraordinary rent increases and no evidence that the landlord has failed to raise rents on a regular basis in which case he now wishes to catch up. On the contrary, the evidence shows that regular rent increases have taken place over the course of this 11 year tenancy and they have been reasonable and agreed to by the parties.

Before I can consider (3)(a): Comparable units, I will consider item (3)(c) to determine if there has there been a change in the service or facility.

I find that the undisputed evidence shows that by way of an order from the City of Kelowna the landlord was required to perform renovations to "...ensure the entire building is free flowing and interconnected". The result of these renovations is that the rental unit has gone from being two separate single family units comprised of two two-bedroom suites to one single family four-bedroom unit. There is no doubt that the facility that the landlord provides has now changed.

However, while the facility has changed, the tenants only pay an amount of rent that is consistent with a one story two- bedroom upper suite as opposed to a two story four-bedroom unit. The landlord submits that the tenants' rental unit has effectively doubled in size while their rent has not. Further, where once the landlord received \$1,850.00 in rent for the two units (\$1,000.00 for the lower suite and \$850.00 for the upper suite) he is now only receiving \$850.00 in rent.

The tenants argue that they do not need or want a four bedroom home and they do not intend to occupy the lower area which is now open to them to occupy. The tenants argue that the landlord ought to have known the lower suite was illegal. However the facts show that whether the tenants wanted a four bedroom unit or not, the City has ordered that their two-bedroom unit be renovated to merge two units into one and the tenants now have a four bedroom unit available to them and the landlord is out-of-pocket \$1,000.00 in rent for the lower unit. I do not accept their argument that the landlord has somehow been unfairly advantaged by having received \$1,000.00 per month for the lower suite. It was a suite and it rented for that sum. It is no longer a suite and it will not be available for rent to another family because it has been merged into one unit.

With respect to the argument whether or not the landlord knew the lower suite was illegal these tenants have lived in the rental unit since 2002. The evidence of the landlord is that he has had the City on site on previous occasions and the City did not state that the suite was illegal. In fact, the evidence shows that it was the 2006 Building Code that was applied to make the determination that the two rental units had to be merged into one. However, whether the suite was illegal at the start of this tenancy or not, I find to be irrelevant to the questions of whether the rental unit is one that should rent for \$1,400.00 now as opposed to \$850.00. Based on the comparables supplied I find that it is.

Therefore in considering the points of the legislation I have asked to consider I find as follows:

- (a) the rent payable for similar rental units is closer to \$1,400.00 than \$850.00;
- (b) the rent history for the rental unit in the 3 years preceding the date of the application is unremarkable;
- (c) the facility that the landlord has provided for the residential property has changed.

In considering this application the legislation states that I may:

- (a) grant the application, in full or in part,
- (b) refuse the application,
- (c) order that the increase granted under subsection (1) be phased in over a period of time, or

Having found that \$1,400.00 per month is a reasonable rental sum for this rental unit, I will allow the application in full.

Giving consideration to the size of the increase I direct that the increase be phased in over a period of time:

- Effective June 1, 2013 the rent shall increase from \$850.00 to \$1,125.00 per month;
- Effective August 1, 2013 the rent shall increase once again from \$1,125.00 per month to \$1,400.00 per month.

The anniversary date of this increase shall be August 1, 2013. This means that the rent may not be increased again until August 1, 2014 and shall be subject to the allowable rental increase amount that shall be fixed at that time.

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: February 19, 2013

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Residential Tenancy Branch

