



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD FF

### Preliminary Issues

The Landlord's daughter appeared at the hearing as the Landlord's Agent and translator. The Agent provided all of the testimony and when required, asked her mother for information and translated the response to English in her affirmed testimony. The Agent is hereinafter referred to as the Landlord for the purpose of this decision.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 25, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep the security and pet deposit and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, and gave affirmed testimony. The Tenants confirmed receipt of the Landlord's application. The Landlord stated that their evidence consisted of a typed written MS Word document which they handed into the *Residential Tenancy Branch* when they handed in their application. I informed the Landlord that this document was not on file and that they could provide testimony about the contents.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord's undisputed testimony indicated the parties entered into a written fixed term tenancy agreement that began on May 1, 2011 and was set to end on April 30, 2013. Rent was payable on the first of each month in the amount of \$3,200.00 and on May 1, 2011, the Tenants paid \$1,600.00 as the security deposit and paid \$500.00 as the pet deposit. The Tenants vacated the property by the end of April 2013 and did not provide the Landlord with a forwarding address. No condition inspection report forms were completed at move in or at move out.

The Landlord testified that during the course of the tenancy the Tenants informed them that they needed to move out prior to the end of the fixed term. The Landlords began to look for replacement tenants and had found someone who was willing to take the unit for \$3,650.00 per month. The Tenants then approached them and asked if they could stay so the Landlords told the Tenants they could stay if they paid \$3,650.00 per month. The Landlord did not have the exact dates in front of them and did not know how many months the higher rent was paid. The Tenants paid the higher rent for a few months and then did not pay any rent for the months of March and April 2013. They are seeking two month's rent (2 x \$3,650.00 plus the deposits).

The Tenants testified and confirmed that in June 2012 they had suffered some financial difficulties and gave their notice to end their tenancy. They thought no one was interested in their unit as no one was coming to see it so when they got some more work they requested to be able to continue on with their tenancy. The Landlords told them they could stay only if they paid the higher rent. They did not want to have to move so they agreed to pay the higher rent and did so for six months from September 2012 to February 2013. They later found out that the rent increase was not done in accordance with the *Residential Tenancy Act* so they attempted to resolve the issues with the Landlord. When that did not work out they simply did not pay rent for March and April 2013.

In closing, the Tenants acknowledged that there is a short fall of rent that they owe \$1,600.00 after the additional rent increase (6 x \$450.00) and their deposits (\$1,600.00 + \$500.00) are applied.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 14 of the Act stipulates as follows:

- (1) that a tenancy agreement may not be amended to change or remove a standard term.
- (2) provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.
- (3) The requirement for agreement under subsection (2) does not apply to any of the following:
  - (a) a rent increase in accordance with Part 3 of this Act;
  - (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;
  - (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

Sections 41, 42, and 43 stipulate the requirements for a rent increase. These sections are copied at the end of this decision for review. The allowable annual rent increase for 2012 was 4.3%.

Section 43(5) provides that 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*** [emphasis added].

The undisputed evidence indicates the fixed term tenancy agreement stipulates that rent is \$3,200.00 payable on the first of each month. The Landlords increased the rent to \$3,650.00 without amending the tenancy agreement in writing and without obtaining the Tenants' signature.

Although the Tenants initially agreed through text messages to pay the additional rent; they did so because they did not want to have to move. When they found out that the increase was not in accordance with the Act they approached the Landlord to fall back on the written tenancy agreement. The Tenants disputed the additional rent increase with the Landlord and when they were not able to come to agreement, the Tenants simply began deducting the overpaid amounts (\$450.00 x 6 months) and stopped all rent payments for March and April 2013.

Based on the above, I find the Landlord breached the Act by increasing the rent by 14.7%. The Tenants withheld the \$2,700.00 (6 x \$450.00) overpayment in accordance with section 43(5) of the Act during the month of March 2013.

Section 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement and Act.

As per the foregoing, I find the Tenants were required to pay the balance owing for March rent of \$500.00 (\$3,200.00 - \$2,700.00) plus April 1, 2013 rent of \$3,200.00. Accordingly, I find the Landlord has met the burden of proof for unpaid rent and I award her a monetary order in the amount of **\$3,700.00** (\$500.00 + \$3,200.00).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposit plus interest as follows:

Unpaid Rent (March & April 2013)	\$3,700.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$3,750.00
<b>LESS:</b> Pet Deposit \$500.00 + Interest 0.00	-500.00
<b>LESS:</b> Security Deposit \$1,600.00 + Interest 0.00	<u>-1,600.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,650.00</u></b>

#### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,650.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and 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 18, 2013

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Residential Tenancy Branch

## **Rent increases**

**41** A landlord must not increase rent except in accordance with this Part.

## **Timing and notice of rent increases**

**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 established under the tenancy agreement;

(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.

## **Amount of rent increase**

**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.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(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.

