



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC, AAT, LAT, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on April 3, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order disputing rent increases?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order that his tenancy includes the garage, driveway, and carport?
- d. Whether the tenant is entitled to an order allowing access to the rental unit for the tenant's guest
- e. Whether the tenant is entitled to an order authorizing the tenant to change the locks?

- f. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties produced a Rental Application dated August 1, 2000 which provided the tenancy would start on August 1, 2000 and the rent was \$525 per month payable in advance on the first day of each month. The rent has been increased on several occasions. The present rent is \$850 per month payable in advance on the first day of the month.

The tenant objects to the amount of the rent increase that took effect on June 1, 2010, June 1, 2011 and June 1, 2012 submitting that those increases are higher than what is permitted under the Residential Tenancy Act and Regulations. The tenant seeks to recover the increase that is more than permitted under the Act.

The landlord disputes the tenant's submission on the following basis:

- The tenant had 3 months to find a new place if he did not like the rent increase.
- The rent that is charged is much lower than other comparable rental units and the tenant is getting an awesome deal
- The tenant should be limited to contesting the last Notice of Rent Increase only.

### Analysis:

Section 40 to 43 of the Residential Tenancy Act provides as follows:

## **Part 3 What Rent Increases Are Allowed**

### **Meaning of "rent increase"**

**40** In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

## **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.

The Residential Tenancy limits the maximum amount of a rent increase to an amount determined by Regulation unless the landlord has applied and obtained an order from an arbitrator under section 43 of the Residential Tenancy Act for an additional rent increase. The maximum allowable increase for the relevant period is set by the Residential Tenancy Act Regulations as follows

- 3.7% for a rent increase commencing in 2010

- 3.2% for a rent increase commencing in 2011
- 4.3% for a rent increase commencing in 2012
- 2.2% for a rent increase commencing in 2014

The landlord has not applied to an arbitrator under section 43 for an additional rent increase.

I determined the amount of the rent increase for the following Notices of Rent Increase are more than permitted under the Act and Regulations:

- Notice of Rent Increase dated March 1, 2010 to be effective June 1, 2010
- Notice of Rent Increase dated March 1, 2011 to be effective June 1, 2011,
- Notice of Rent Increase dated March 1, 2012 to be effective June 1, 2012
- Notice of Rent Increase dated April 1, 2014 to be effective July 1, 2014

I do not accept the submissions of the landlord that the rent increases are valid and the tenant is not entitled to dispute these increases. The Residential Tenancy Act and Regulations limits a rent increase to an amount set by Regulations unless the landlord has obtained an order under section 43 of the Act for an additional rent increase. The tenant is legally entitled to dispute an increase that does not met this requirement and is not required to vacate the rental unit if he disagrees. Further, the tenant is entitled to dispute an illegal rent increase even though the rent demanded by the landlord is comparable or less than other units in the area. The Act requires that the landlord apply for and obtain an order from an arbitrator for an additional rent increase. Finally I do not accept the submission of the landlord that the tenant is limited to disputing the last increase only. Section 43 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. That section does not limit the tenant to the last Notice of Rent Increase only.

Calculation of the Overpayment:

The first Rent Increase disputed by the tenant is the Notice of Rent Increase dated March 1, 2010 that increased the rent from \$675 to \$750 effective June 1, 2010.

- Base rent \$675 per month
- Rent Increase as set out in Notice of Rent Increase: \$75 increasing the rent to \$750
- Rent paid by Tenant starting June 1, 2010 - \$750 per month
- Maximum Permissible Rent Increase – 3.7%
- Actual maximum permissible rent increase - \$24.97 per month
- Actual permissible rent - \$699.97 per month
- Overpayment of rent for the period June 1, 2010 to May 31, 2011 - **\$600.36**  
( $\$750 - \$699.97 = \$50.03$  multiplied by 12 months = \$600.36)

The tenant disputes the rent increase dated March 1, 2011 to be effective June 1, 2011

- Base rent as provided in Notice of Rent Increase - \$750 per month
- Rent Increase as set out in Notice of Rent Increase: \$50 per month increasing the rent to \$800 per month
- Rent paid by Tenant starting June 1, 2011 to May 31, 2012 - \$800 per month
- Maximum Permissible Rent Increase – 3.2% (of the previous permissible rent of \$699.97)
- Actual maximum permissible rent increase - \$22.40 per month
- Actual permissible rent - \$722.37 per month ( $\$699.97$  plus  $\$22.40 = \$722.37$ )
- Overpayment of rent for the period June 1, 2011 to May 31, 2012 - **\$931.56**  
( $\$800 - \$722.37 = \$77.63$  multiplied by 12 months = \$931.56)

The tenant disputes the rent increase dated March 1, 2012.

- Base rent as provided in Notice of Rent Increase - \$800 per month
- Rent Increase as set out in Notice of Rent Increase: \$50 per month increasing the rent to \$850 per month
- Rent paid by Tenant starting June 1, 2012 to May 1, 2014 - \$850 per month

- Maximum Permissible Rent Increase – 4.3% (of the previous permissible rent of \$722.37)
- Actual maximum permissible rent increase - \$31.06 per month
- Actual permissible rent - \$753.43 per month (\$722.37 plus \$31.06 = \$753.43)

Overpayment of rent for the period June 1, 2012 to May 1, 2014 - **\$2221.11**

( $\$850 - \$753.43 = \$96.57$  multiplied by 23 months = \$2221.11)

I determined the landlord has collected rent in excess of what is permitted under the Residential Tenancy Act pursuant to Notices of Rent Increase and the tenant is entitled recover the sum of \$3753.03 ( $\$600.36 + \$931.56 = \$2221.11 = \$3753.03$ ).

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$3753.03 plus the sum of \$50 in respect of the filing fee paid pursuant to section 49 for a total of \$3803.03 such sums may be applied against future rent.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The landlord has also served a Notice of Rent Increase dated April 1, 2014 that purports to increase the rent from \$850 per month to \$950 per month effective July 1, 2014. The base rent and the allowable rent increase are in excess of what is permitted by the Act and Regulations. I have also considered the landlord's submission that the rents are more than fair and the tenant is receiving an awesome deal. I determined that it is appropriate to make an order that the Notice of Rent Increase dated April 1, 2014 is null and void. This will give the landlord an opportunity to make an application under section

43 of the Act for an additional rent increase should the landlord wish rather than being limited to the maximum allowable increases as set out in the legislation. If the landlord chooses not to make such an application the landlord is at liberty to serve a new Notice of Rent Increase that provides that the base rent is \$753.43.

Tenant's Application that the tenancy includes the garage, carport and driveway:

The tenant seeks an order stating that his tenancy includes the garage, carport and driveway. The tenant testified there was an oral agreement to this effect at the start of the tenancy. He has used these areas since he moved into the rental unit in 2000. The tenancy agreement does not state what is included in the tenancy. The landlord objects saying that the upstairs tenant (her son) has the right to the benefit of these areas. I disagree. I am satisfied that the garage, carport and driveway were part of the original tenancy agreement and the tenant is entitled to retain the use of these areas.

Tenant's Application for an Order dealing with Guests:

I determined that it was not appropriate to make an order with respect to access of guests. The parties are referred to paragraph 9 of the standard terms found in the schedule to the Residential Tenancy Act Regulations which are incorporated into all tenancy agreements:

**Occupants and guests**

- 9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Tenant's Application for an Order authorizing the tenant to change the locks:

I determined that the insufficient evidence for an arbitrator to make an order authorizing the tenant to change the locks. If the tenant has changed the locks the landlord has a right that the tenant provide the landlord with a key.

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: May 16, 2014

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Residential Tenancy Branch

