



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, FF, O

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

All the parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant TM testified that he sent copies of the dispute resolution package (including the tenants' evidence) to both the address listed for service on the tenancy agreement and to the landlord's sister. I confirmed the address to which the tenants had sent the package. The address matched the service address provided by the landlord on the tenancy agreement. The landlord LP (the landlord) registered her discontent regarding the tenants' service as she stated that the tenants knew that she was out of the city on vacation. I was not provided with any written notice by the landlord that indicated that the landlord had provided an alternate service address.

In any event, the landlord admitted that she had received a copy from her sister and was able to review the evidence submitted by the tenants. The tenant TM provided me with Canada Post tracking numbers for the two mailings. On this basis of this evidence, I find that the landlord was served with the dispute resolution package in accordance with section 89 of the Act.

The landlord testified that on 20 November 2014 she personally delivered her evidence to the tenant TM. The tenant TM confirmed that he received the landlord's evidence. On the basis of this evidence, I find that the tenants were served with the landlord's evidence in accordance with section 88 of the Act.

#### Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement? Are the tenants entitled to an order regarding a disputed additional rent increase? Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The tenants and landlord entered into a tenancy agreement on or about 22 August 2011. The tenancy began 1 September 2011. Monthly rent of \$1,000.00 was due on the first. No pet damage deposit was collected at the beginning of the tenancy.

In May 2012, the tenants acquired a dog. The tenants testified that they discussed the dog with the landlord before acquiring it.

There was some dispute as to the authenticity of some documents as the tenants alleged that various signatures and initials did not match. I am not particularly concerned with who authored the letters and made additions to the rental agreement as I find that the landlord's sister was acting as her agent at all relevant times. Furthermore, whether or not the documents were authentic has no material effect on the outcome of this case.

The landlord issued written notices of rent increases. These increases were not in the prescribed form. The tenant ER initialled the rent increase letter. I was provided with one such rent increases notice dated 7 November 2012. This notice set out:

As of March 1<sup>st</sup> 2013 the rent will be increased by 3.8% making the monthly payments \$1,038 per month.

*[landlord signature]*

Thank You: [landlord]

*[tenant ER initials]*

The tenants paid the landlord the following monthly amounts in rent:

<b>Date Range</b>	<b>Rent Amount</b>
September 2011 to February 2013	\$1,000.00
March 2013 to February 2014	1,034.00
March 2014 to Oct 2014	1,077.44
November 2014	891.23

I asked the tenants what they thought their current rent should be. The tenants indicated that they believed that their rent should be \$1,056.75 and that they sought an order to confirm this amount.

I was provided with a letter of agreement dated 31 October 2014. This letter of agreement set out the following rent amounts:

<b>Date Range</b>	<b>Rent Amount</b>
March 2013 to February 2014	1,034.00
March 2014 to Oct 2014	1,077.44
November 2014	891.23
December 2014 to February 2015	1,056.75

This letter of agreement provides:

*In regards to the rental agreement at [address].*

...

*We have agreed with the designated agent, to issue three new cheques at the correct rate, which is \$1056.75. Cheques at this amount will be provided for Dec 2014, Jan 2015 and Feb 2015. The new cheque for the month of November 2014 will be at the correct rental amount, minus the amount that has been overpaid for the last 8 months. The overpayment amount is: \$165.52. The issued amount for November 2014 rent will be \$891.23.*

*Given that [landlord] is unavailable on this day to deal with this matter, her elected agent will receive the new cheques for rent. [Agent] has received all new payments of rent up to and including Feb 2015. [Agent] approves of the decision to issue the new rental payments at the correct amount and the cheque for November 2014, with overpayment deducted. ...*

This letter of agreement is signed by both tenants and the landlord's agent.

The landlord's sister testified that the tenants told her to sign this document in order to take the cheques. The landlord's sister testified that she felt pressured to sign this document and that she did not read it

The landlord asked that I award her costs for her return from vacation. I informed the landlord that as there was no application from her before me, I would not be considering any claim by her.

### Analysis

In the course of the hearing I read the following relevant provisions to the tenants and landlord:

#### Paragraph 20(c):

A landlord must not do any of the following...

- (c) require a pet damage deposit at any time other than
  - (i) when the landlord and tenant enter into the tenancy agreement, or
  - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

#### Subsection 26(1):

A tenant must pay rent when it is due under the tenancy agreement...unless the tenant has a right under this Act to deduct all or a portion of the rent.

#### Subsection 42(3):

A notice of a rent increase must be in the approved form.

Section 43:

- (1) A landlord may impose a rent increase only up to the amount
  - (a) calculated in accordance with the regulations,
  - (b) ..
  - (c) agreed to by the tenant in writing.
- (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.

*Analysis – Tenants’ Application for Issuance of an Order regarding the Pet Damage Deposit*

The tenants seek an order requiring the landlord to comply with the Act. At the hearing the tenants explained that this relates to the landlord late demand for a pet deposit for a dog which they have had since 2012. The tenants and landlord were able to reach a settlement with respect to the tenants’ claim in relation to the pet deposit.

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, and achieved a resolution of their dispute on this one aspect of the tenants’ claim.

The landlord and tenants were able to reach an agreement that the pet damage deposit was no longer an issue and that the landlord was not going to collect a pet damage deposit. On the basis of this settlement the tenants withdrew their application in respect of the pet damage deposit. The tenants acknowledged that they understood that even though there was no pet damage deposit they would still be liable for any damage caused by their pet.

I confirmed with both parties that this agreement represented a complete and binding resolution of this aspect of the tenants’ application. Both tenants and the landlord agreed that they understood that this settlement was binding on them.

*Analysis – Remainder of Tenants' Application*

I have considered the question of the rent increases for this tenancy and the tenants' application to recover their filing fee.

I find that the landlord has never issued a rent increase in compliance with the Act. I find that the rent increases issued in 2012 or 2013 did not constitute validly issued notices of rent increase as they were not in the approved form. I do not agree with the landlord's contention that the notes initialed by the tenant ER constitute a written agreement as to the rental increase. There is no indication from these notes that it is an agreement. The notes could have merely been signed acknowledging receipt. In order to be an effective agreement, the agreement would have to be unambiguous as to what the parties were agreeing.

On that basis, monthly rent owing under the tenancy was \$1,000.00: the original rent under the tenancy agreement. However, I find that the tenants and landlord (through her agent) entered into a valid agreement as to the rent when the landlord's agent and the tenants signed the agreement dated 31 October 2014. I find that the tenants did not engage in any behaviour that would void or avoid the contract. I hold the landlord and tenants to this agreement.

Accordingly, I find that:

1. The monthly rent for the period September 2011 to February 2013 was \$1,000.00.
2. The monthly rent for the period March 2013 to February 2014 was \$1,034.00.
3. The monthly rent for the period March 2014 to the next validly issued rent increase is \$1,056.75.

The next possible rent increase would be \$1,083.16 based on an increase of 2.5% on the current rent amount of \$1,056.75. In order to increase rent the landlord must comply with the provisions of the Act that relate to rent increases.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application. The tenants may recover their filing fee by deducting a total of \$50.00 from one month of rent.

Conclusion

The tenants' application that the landlord comply with the Act as it relates to the collection of a pet damage deposit is withdrawn and the landlord agrees that she will not collect a pet damage deposit.

I order that current rent is \$1,056.75 monthly.

I order that the tenants are entitled to deduct \$50.00 from one month of rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 03, 2014

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Residential Tenancy Branch

