



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC

### Introduction

This was an application by a tenant for recovery of an amount of an increase in rent that did not comply with the Act. Both the landlord and tenant were represented at the hearing.

### Issue(s) to be Decided

Is the tenant entitled to recover any amount of rent paid?

### Background and Evidence

The tenant testified that the tenancy commenced on December 1, 2014 and ended on October 31, 2014 when she moved out pursuant to a landlord use Notice to End the Tenancy. The tenant testified that the rent was \$ 400.00 per month originally but the landlords increased it by verbal notice to \$ 450.00 around 2012 or 2013. The tenant testified that in December 2013 the landlords then advised the tenant that her rent would be increased again from \$ 450.00 to \$ 500.00 commencing on January 1, 2014. This intention was evidenced in a letter from the landlords dated December 16, 2013 confirming the increase. The tenant claims that she is entitled to recover the improper or illegal rent increase of \$ 50.00 per month from January 2014 through September 2014 totaling \$ 450.00.

BG the landlord testified that the rent increases were always informal and that the tenant agreed and paid them. He testified that her rent included utilities and that as the cost of those utilities rose substantially the landlords believed they were entitled to pass on those increases by way of a rent increase. He testified that the tenant was advised verbally of the rent increase in December 2013 and that she requested a letter confirming the increase to show to social services as it was they who were paying the

rent. The landlord testified that if any money was owed it was to social services and not the tenant.

### Analysis

Section 41 of the Residential Tenancy Act states:

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

Section 42 of the Residential Tenancy Act states:

- (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 rent increase must be in the approved form.
- (4) If a landlord's notice of rent increase does not comply with subsections (1) and (2), the notice takes effect on the earlier date that does comply.

Section 43 of the Residential Tenancy Act states:

- (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 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)
- (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.** [Emphasis added.]

In this matter the landlords increased the rent in an amount in excess of 2.2% which is the maximum allowable amount of increase prescribed in the Regulations permitted for 2014. Additionally the landlords did not comply with section 41 of the Act by not giving the tenant three months notice of the proposed increase in the prescribed form. Accordingly I find that the tenant is entitled to recover the increase of \$ 450.00 pursuant to section 41(5) of the Act.

I note that the landlords are not entitled to claim that it is social services who must be paid. That is a matter between the tenant and social services.

Conclusion

I have granted the tenant a monetary Order in the amount of \$ 450.00. The landlords must be served with a copy of this decision and Order as soon as possible. The Order may be enforced in the Small Claims Court of BC.

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: January 13, 2015

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Residential Tenancy Branch

