



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Claymore Development Co. Ltd.  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes      DRI, FF

#### Introduction

This hearing was convened in response to an application by the Tenant disputing a rent increase pursuant to section 43 of the *Residential Tenancy Act* (the “Act”) and an order to recover the filing fee for this application.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

#### Issue(s) to be Decided

Is the Tenant required to pay the increased rent?

#### Background and Evidence

The tenancy started 22 years ago. Prior to August 1, 2015 the Tenants paid rent of \$1,379.00. On January 18, 2015 the Landlord sent a letter to the Tenants outlining their request for an agreement by the Tenants to a rent increase that would be higher than provided under the Act. A copy of this letter was provided as evidence. The rent increase being sought was for \$1,585.00 as of August 1, 2015. Rent has been paid at this rate pending the outcome of this dispute.

The Tenant states that initially they were opposed to the rent increase and were not intending to agree but that on January 27, 2015, the night prior to the deadline given by the Landlord for such agreement, the Tenant’s wife who is also a co-tenant was visited

by the Landlord. The Tenant states that his wife felt pressured into agreeing to the increase as the Landlord talked about a rent increase that could otherwise be as high as \$2,000.00 per month. The Tenant states that they felt there was no choice as they could not afford the amount that the Landlord suggested could occur. The Tenant states that there was some discussion about repairs and maintenance to the unit and that the Tenants had the impression that the Landlord would carry out repairs after the rent increase. The Tenant states that throughout the tenancy the Landlord was either slow to make repairs or none were done at all. The Tenant states that since they had a good relationship with the Landlord they had to think long and hard about changing their agreement and upon receiving the Landlord's official notice of rent increase on May 1, 2015 they sent a letter the same day indicating that they no longer agreed to the increase as they felt that the amount that they agreed to was not reasonable.

The Landlord states that the original agreement contained a list of items that required attention and states that most of these items have since been taken care of or are being scheduled. The Landlord states that during the conversation with the Tenant prior to their agreement there was no pressure. The Landlord states that they spoke with all the tenants who had not yet agreed before the deadline. The Landlord states that there was some conversation about items the Tenants wanted addressed in the unit as set out in their letter plus a few more items. The Landlord states that they agreed they would do repairs and maintain the unit after the agreement was implemented. The Landlord states that because of the increased rent coming in they are able to maintain the units and that the increase made a big difference.

The Tenant states that the bathroom issues raised in the agreement letter had been an ongoing problem and despite asking the Landlord to repair the bathroom nothing had been done. The Tenant states that at the time of the agreement the bathroom was so in need of repair that the door would no longer close but that every time they asked for repairs they were told that there was no money for repairs. The Tenant states that a couple of days after the agreement the bathroom was repaired. The Tenant states that although the letter also addressed the old curtains only one new set of curtains in the

unit was provided after the agreement letter. The Tenant states that most of the minor repairs that have been done by the Tenants over the years.

The Landlord states that the opposition to the rent increase only came in July 2015 after a decision came out denying the rental increase on other units. The Landlord acknowledges that it did receive the letter of non-agreement on May 1, 2015. The Landlord is not aware of the Tenants being given a copy of that decision but believe that they would most likely be aware of it given their proximity to the tenants involved and the community nature between the tenants in the building.

### Analysis

Section 43(1)(c) of the Act provides that a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing.

Given the Tenants' letter of agreement noting the effective communication by the Landlord, and considering that the tenant who was present for the discussion with the Landlord on the day before the deadline did not provide any direct evidence on this point, I do not consider the Tenant's argument of being pressured to hold much weight. Beyond the letter of agreement and the Tenant's oral evidence there is no other evidence to support that the agreement was somehow obtained unfairly. It appears more likely that the Landlord presented the Tenants with a risk of having to pay a much higher rent than the one offered by the Landlord and the Tenants decided initially to take the risk and not agree. After then speaking directly to the Landlord the night before the deadline the co-tenant decided to take advantage of the lower rate with no risk. I find therefore that the Tenants agreed to the rental increase proposed by the Landlord and I dismiss the Tenant's claim to uphold the retraction or rescission of their agreement.

In considering the evidence that was presented at the hearing, I am disturbed by the level of repairs that appear to have been needed throughout the tenancy and the Landlord's assurances that these would be taken care of after the increase was

obtained. Although something was made of the Landlord's promises to repair the unit possibly in exchange for the agreement, it should be noted that a landlord may not obtain a new agreement based on the fulfillment of an existing promise to repair or maintain the unit. These obligations remain with the Landlord throughout a tenancy and regardless of whether or not rental increases are given or offered for agreement. I would also direct the Parties attention to the Residential Tenancy Policy Guideline # 40 "Useful Life of Building Elements" to assist the Parties in relation to ongoing repairs and maintenance of a rental unit.

As the Tenant has not been successful with its application, I find that the Tenant is not entitled to recovery of the filing fee and in effect the entire application is dismissed.

#### Conclusion

The application is dismissed.

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: September 18, 2015

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Residential Tenancy Branch

