



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC O FF

### Preliminary Issues

At the outset of this proceeding the Landlord requested that the spelling of his first name be corrected to remove the “h”. The Tenant had no objections to the request. Accordingly, the style of cause has been amended to show the correct spelling of the Landlord’s first name, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 27, 2015. The Tenant filed seeking to have the Landlord Ordered to comply with the *Act*, Regulation, and/or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony and the Landlord confirmed receipt of the Tenant’s application and notice of hearing documents.

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.

No documentary evidence was submitted to the Residential Tenancy Branch (RTB) by either party.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the Landlord be ordered to comply with the *Act*, Regulation and/or tenancy agreement?

### Background and Evidence

The Tenant and his mother resided in the rental building for many years and occupied the current rental unit in August 2013. The Tenant's mother moved out September 1, 2015 leaving the Tenant as the sole occupant of the rental unit. Rent of \$800.00 is payable on the first of each month. The Tenant(s) paid a security deposit of \$400.00 on or around August 1, 2013.

The Tenant testified that shortly after his mother moved out he had heard that the Landlord had approached other tenants and asked them if they wanted to occupy the Tenant's rental unit for \$1,200.00 per month.

The Tenant stated that the Landlord later approached him and asked him to move out. When he refused he said the Landlord told him that he would be raising his rent. The Tenant submitted that when he told the Landlord that he could not raise his rent above the legislated amounts the Landlord told him that he would be evicted so the Landlord could conduct renovations.

The Tenant asserted that he had requested repairs over the last two year period; however, those repairs would not require him to vacate the unit. He stated that once he served the Landlord with his application for Dispute Resolution the Landlord stopped his pursuit of trying to evict him.

The Landlord initially stated that he had a written tenancy agreement with the Tenants. Upon further clarification he stated that he may have had a written tenancy agreement and then changed his testimony a third time to state that the tenancy agreement was probably for the previous unit the Tenant(s) occupied.

The Landlord testified that he had a discussion with the Tenant's mother when they spoke about the rental unit being too big for the Tenant on his own. He asserted that they discussed with the Tenant that he would move into a smaller rental unit for less rent and that the Tenant initially agreed. The Landlord asserted that he had no intention of raising the rent; rather, he was offering the Tenant a lower rent. The Landlord stated that the Tenant has since changed his mind.

The Landlord submitted that he would not have evicted the Tenant. He said if he wanted to rent to the other family then it would have been based on a mutual agreement with the Tenant. He asserted that he was shocked that the Tenant filed his application for Dispute Resolution as there was no need to have this hearing because the Tenant was a good tenant. Then he stated that he does have to raise the Tenant's rent.

When I asked the Landlord if he knew the legislative requirements for raising the rent, he stated that he did not know and that he could read the “books” to learn.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Based on the above, and in absence of documentary evidence to prove the contrary, I find that these parties have a tenancy agreement verbal or written and the terms of that agreement are recognized and enforceable under the *Residential Tenancy Act*.

I favored the Tenant’s evidence over the Landlord’s evidence with respect to what transpired prior to the Tenant filing his application for Dispute Resolution. I favored the Tenant’s evidence because it was forthright, consistent, and credible.

I do not accept the Landlord’s submission that he intended to work towards a mutual agreement. If that were the case, I find it improbable that the Tenant would have paid a filing fee to seek a remedy through dispute resolution. Furthermore, the Landlord contradicted his own testimony regarding the presence of a written tenancy agreement as well as his intent on raising the rent. He initially stated that he would not raise the rent if the Tenant did not want to move out and then stated that he would be raising the rent in accordance with the *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

After consideration of the foregoing, I hereby Order the Landlord to comply with the *Act*, Regulation, and the tenancy agreement, pursuant to section 62(3) of the *Act*.

I caution the Landlord that under section 95(2) of the *Act*, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the *Act*, or for seeking or obtaining a remedy under the *Act*, may be found to have committed an offence and is subject to a fine or administrative penalty.

In addition, such actions of intimidation or harassment on the part of a landlord may be seen as a loss of quiet enjoyment for which a tenant could seek monetary compensation.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

### Conclusion

The Tenant has succeeded with his application and the Landlord was Ordered to comply with the *Act*, Regulation and tenancy agreement. I encourage the Landlord to learn his rights and obligations as set out in the *Act*.

The Tenant may deduct the one time award of \$50.00 from his next rent payment, as full and final recovery of his filing fee, pursuant to section 72(2) of the *Act*. If rent is paid in a manner that does not allow the Tenant to deduct the filing fee the Tenant has been issued a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with 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 29, 2015

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Residential Tenancy Branch

