



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

SHIRE DEVELOPMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, O

### Introduction

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

- an order regarding a disputed rent increase, pursuant to section 43; and
- other remedies, identified as a declaration of the current monthly rent amount for this rental unit.

The landlord, DL ("landlord") and the tenant, EP ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the office manager for the "landlord company" named in this application and that he had authority to speak on its behalf at this hearing. The landlord said that the landlord company is an agent for the "landlord owner" of this rental unit (collectively "landlords"). The tenant confirmed that she had authority to speak on behalf of her daughter, "tenant CG," the other tenant named in this application (collectively "tenants").

The tenant testified that the landlords were served with the tenants' application for dispute resolution hearing package ("Application") at the end of February 2016, by way of registered mail. I allowed the tenant to send me a copy of the Canada Post registered mail receipt after the hearing, as the tenants had not sent it with their written evidence prior to this hearing. I received the receipt and considered it in my decision, as I found no prejudice to the landlords in doing so. The receipt indicates that the Application was sent out on February 29, 2016. The landlord confirmed receipt of the tenants' Application on April 2, 2016. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' Application. I find that the Application was served by the tenants within three days of receiving the notice of hearing, dated February 26, 2016, in accordance with section 59(3) of the *Act*, despite the fact that the landlord said that it was received in April 2016.

Initially the landlord stated that he did not receive a two-page email, dated June 10, 2014 ("email") from the tenants, as part of their written evidence package. The tenant said that she left a copy of the email in the landlord's mailbox on April 12, 2016, two days before this hearing. Later during the hearing, the landlord stated that he had already received the email from the landlord owner prior to this hearing. The landlord relied on this email to support the landlords' position. Accordingly, I advised both parties that despite the fact that this email was served upon the landlords late, less than seven days before this hearing contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, I would consider this email in my decision, as both parties had a copy of the email, had reviewed it and had relied on it to support their positions. The landlord consented to this during the hearing.

I allowed the landlord to send me a copy of the written tenancy agreement and the Notice of Rent Increase ("NRI"), with the consent of the tenant, after the hearing, as neither party had provided copies prior to the hearing. I received these copies and considered them in my decision.

#### Issues to be Decided

Are the tenants entitled to an order regarding a disputed rent increase?

Are the tenants entitled to a declaration of the current monthly rent amount for this rental unit?

#### Background and Evidence

Both parties agreed to the following facts. This tenancy began on February 15, 2014 for a fixed term of one year after which it transitioned to a month-to-month tenancy. A security deposit of \$825.00 was paid by the tenants and the landlords continue to retain this deposit. The tenants continue to reside in the rental unit. A written tenancy was signed by both parties. The landlord said that he became an agent for the landlord owner in December 2014, following the landlord owner's health issues.

Both parties agreed that the written tenancy agreement indicated rent of \$1,650.00 was due on the 15<sup>th</sup> day of each month. Both parties agreed that the landlord owner, through the email noted above, permitted the tenant to pay a reduced monthly rent amount of \$1,615.00 per month, effective as of June 15, 2014. The landlord said that this was only a temporary agreement for four months based on the tenant's comment in her email that "we would like to try living here for another 4 months" and requesting a rent reduction due to "difficult neighbours." The landlord said that this was not a

permanent rent reduction. The landlord said that the tenant has not spoken to the landlord owner since September 2014 because he was in the hospital for five months. The tenant disputed this, saying that she has spoken to the landlord since September 2014.

The tenant said that the monthly rent for this rental unit is \$1,615.00 from June 15, 2014 to the current date. She said that the tenants have only paid this rent amount to the landlords since the above date and they have accepted it without complaint. She said that the landlords did not advise the tenants that the rent would revert back to \$1,650.00 at any time and that the first she learned of this on the NRI issued by the landlords saying that rent was being increased from the original amount of \$1,650.00 per month.

The landlord confirmed that he served an NRI to the tenants by registered mail. The landlord said that the notice was dated for December 13, 2015, but the copy he sent in after the hearing was dated for December 14, 2015. The tenant said that she received it in early January 2016. The NRI states that rent in the total amount of \$1,691.25 is payable starting on April 15, 2016. The current monthly rent indicated on the NRI is \$1,650.00 and the increase in rent is \$41.25. The tenant said that this is an illegal rent increase above the allowable Regulation amount, as the tenants' rent is \$1,615.00, not \$1,650.00 per month.

### Analysis

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

The landlord owner did not appear at this hearing to provide testimony, despite me asking the landlord whether he was available to testify. The landlord at this hearing is attempting to interpret the email of the landlord owner. The email does not state an end date for the reduced rent amount. I disagree with the landlords' position that the agreement was only in place for four months. I find that the tenants were only referring to her housing situation and the disturbance of neighbours, not that rent should only be reduced for four months.

Both parties agreed that the rent for this unit was reduced to \$1,615.00 per month, effective as of June 15, 2014. I find that the landlords and the tenants intended the monthly rent to be \$1,615.00 until the current date. The landlords continued to accept rent of \$1,615.00 per month from the tenants from June 2014 until December 2015 when the NRI was issued, a period of 1.5 years, without complaint or notification or a

request to the tenants to pay the original written tenancy agreement amount of \$1,650.00. Therefore, I find that the landlords waived their right to obtain rent of \$1,650.00 from the tenants.

Although the landlords issued an NRI on December 14, 2015 and three months' notice was provided to the tenants of the rent increase to \$1,691.25 per month, this rent increase is based on an incorrect starting amount of \$1,650.00. I find that the monthly rent for the tenants' rental unit was \$1,615.00 on December 14, 2015, the date of the NRI. The landlords' increase from \$1,615.00 to \$1,691.25 is above the allowable amount of 2.9% under the *Regulation* for 2016. Therefore, the landlords' Notice of Rent Increase, dated December 14, 2015, is cancelled and of no force or effect.

I order that the monthly rent for the tenants' rental unit is \$1,615.00, retroactively effective as of June 15, 2014 and for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

The tenant has only paid \$1,615.00 for rent to date, and I advised her to pay \$1,615.00 for rent on April 15, 2016, until she received my decision.

### Conclusion

The tenants' application to dispute a rent increase is allowed.

The landlords' Notice of Rent Increase, dated December 14, 2015, is cancelled and of no force or effect. I order that the monthly rent for the tenants' rental unit is \$1,615.00 retroactively effective as of June 15, 2014, for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

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: April 18, 2016

---

Residential Tenancy Branch