



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied to dispute a rent increase, for a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on February 18, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted with the Application were personally served to the Landlord's husband. The Landlord stated that she received these documents from her husband and they were accepted as evidence for these proceedings.

On August 09, 2016 the Landlord submitted 4 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the female Tenant's place of employment on February 18, 2016. The female Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Has there been a rent increase that exceeds the amount authorized by the *Residential Tenancy Act (Act)* and, if so, are the Tenants entitled to a rent refund?

Background and Evidence:

The Landlord and the Tenants agree that:

- the tenancy began prior to the Landlord purchasing the rental property;
- the tenancy ended on December 31, 2015;
- rent was due by the first day of each month;
- the Landlord gave the Tenants a Notice of Rent Increase, which notified the Tenants that rent was increasing from \$650.00 to \$700.00, effective November 01, 2013;
- the Tenants paid \$700.00 in rent from November 01, 2013 to October 31, 2014;
- the Landlord gave the Tenants a Notice of Rent Increase, which notified the Tenants that rent was increasing from \$700.00 to \$800.00, effective November 01, 2014;

- the Tenants paid \$800.00 in rent from November 01, 2014 to October 31, 2015;
- the Landlord gave the Tenants a Notice of Rent Increase, which notified the Tenants that rent was increasing from \$800.00 to \$850.00, effective November 01, 2015;
- the Tenants paid \$850.00 in rent from November 01, 2015 to December 31, 2015;
- the Tenants did not agree, in writing, to the aforementioned rent increases; and
- the Landlord did not have written authorization from the Residential Tenancy Branch to increase the rent in the aforementioned amounts.

The Landlord stated that she believed she was complying with the legislation when she served the Tenants with written notice of these three rent increases.

Analysis:

Section 43(1)(a) of the *Act* authorizes a landlord to increase the rent only up to the amount calculated in accordance with the *Residential Tenancy Regulations*.

In 2013 landlords were able to increase the rent by 3.8%. On the basis of the undisputed evidence I find that the Landlord increased the rent from \$650.00 to \$700.00 on November 01, 2013, which is 7.69%. I find that this rent increase exceeds the allowable rent increase for 2013. As the Landlord did not increase the rent in 2013 in an amount that complied with the legislation, I find that the rent remained at \$650.00 on November 01, 2013.

In 2014 landlords were able to increase the rent by 2.2%. On the basis of the undisputed evidence I find that the Landlord increased the rent to \$800.00 on November 01, 2014. Had the rent been lawfully increased to \$700.00 on November 01, 2013, this would be a rent increase of 14.29%. As the rent remained at \$650.00 on November 01, 2013, this was a rent increase of 23.08%. As the Landlord did not increase the rent in 2014 in an amount that complied with the legislation, I find that the rent remained at \$650.00 on November 01, 2014.

In 2015 landlords were able to increase the rent by 2.5%. On the basis of the undisputed evidence I find that the Landlord increased the rent to \$850.00 on November 01, 2015. Had the rent been lawfully increased to \$800.00 on November 01, 2014, this would be a rent increase of 6.25%. As the rent remained at \$650.00 on November 01, 2013, this was a rent increase of 30.77%. As the Landlord did not increase the rent in 2015 in an amount that complied with the legislation, I find that the rent remained at \$650.00 on November 01, 2015.

Section 43(1)(b) of the *Act* authorizes a landlord to increase the rent only up to the amount ordered by the Residential Tenancy Branch. As there is no evidence the Landlord had authority from the Residential Tenancy Branch to increase the rent by an amount that exceeds the amount calculated in accordance with the *Residential Tenancy Regulations*, I find that the Landlord did not have the right to increase the rent in the aforementioned amounts pursuant to section 43(1)(b) of the *Act*.

Section 43(1)(c) of the *Act* authorizes a landlord to increase the rent only up to the amount agreed to by the tenant, in writing. As there is no evidence the Tenants agreed, in writing, to increase the rent in the aforementioned amounts, I find that the Landlord did not have the right, pursuant to section 43(1)(c) of the *Act*, to impose those rent increases.

On the basis of the undisputed evidence I find that the Tenants paid rent of \$700.00 per month

between November 01, 2013 and October 31, 2014, which is \$8,400.00. As the rent remained at \$650.00 for these 12 months, I find that they should have only paid \$7,800.00. I therefore find that they overpaid their rent by \$600.00 during this period.

On the basis of the undisputed evidence I find that the Tenants paid rent of \$800.00 per month between November 01, 2014 and October 31, 2015, which is \$9,600.00. As the rent remained at \$650.00 for these 12 months, I find that they should have only paid \$7,800.00. I therefore find that they overpaid their rent by \$1,800.00 during this period.

On the basis of the undisputed evidence I find that the Tenants paid rent of \$850.00 per month between November 01, 2015 and December 31, 2015, which is \$1,700.00. As the rent remained at \$650.00 for these 2 months, I find that they should have only paid \$1,300.00. I therefore find that they overpaid their rent by \$400.00 during this period.

Section 43(5) of the *Act* stipulates that when a landlord collects a rent increase that does not comply with the legislation, the tenant may recover the increase. As I have concluded that the Tenants overpaid their rent by \$2,800.00, I find that they are entitled to recover this amount, pursuant to section 43(5) of the *Act*.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of \$2,900.00, which includes a rent refund of \$2,800.00 and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia 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: October 03, 2016

Residential Tenancy Branch