



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein he disputed a rent increase and to recover the filing fee.

The hearing was conducted by teleconference on January 24, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the rent increase allowable under the *Residential Tenancy Act*?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began March 15, 2015. He stated that he paid \$525.00 in rent at the start of the tenancy. The Tenant submitted that the Landlord illegally raised his rent over the allowable amount and without the proper written notice. He stated that shortly before January 2016 the Landlord asked that he pay an additional \$25.00 in rent such that he would be required to pay \$550.00 in rent commencing January 1, 2016. When he informed the Landlord this was too much for him, the Landlord told him to pay \$545.00 in February and \$550.00 every month thereafter. In support he provided in evidence copies of his rent receipts confirming he paid the following:

- February 1, 2016: \$545.00

- March 2, 2016: \$550.00
- April 1, 2016: \$550.00
- May 1, 2016: \$550.00
- June 1, 2016: \$550.00
- July 1, 2016: \$550.00
- August 1, 2016: \$550.00
- September 1, 2016: \$550.00
- October 1, 2016: \$550.00
- October 1, 2016: \$550.00

The Tenant further testified that he paid \$550.00 in December 2016.

The Tenant stated that the Landlord again asked that the Tenant to pay an additional \$25.00 per month such that his monthly rent would increase to \$575.00. The Tenant further stated that the Landlord also requested an increase of the security deposit.

The Tenant stated that he spoke to the residential tenancy branch at which time he was informed that the rent increase and the request for an additional security deposit was not permitted. He then deduced the amount requested by the Landlord and paid the Landlord the sum of: \$562.50 for January 1, 2017.

In the within hearing the Tenant sought return of the amounts he paid over and above the allowable amount. He also sought recovery of the \$100.00 filing fee and the amounts he paid to send his materials to the Landlord by registered mail.

The Landlord also testified. He confirmed that he did not issue a Notice of Rent Increase in the prescribed form. He stated that he had not raised the rent for many years and when he raised it in 2016, it was to catch up for the time he had not raised the rent. He also stated that, although the Tenant complained about the rent increase, he paid it, and as such the Landlord believed the Tenant had agreed to the rent increase.

The Landlord further stated that he was now aware that he was not permitted to request an additional security deposit and those funds had already been accounted for when the Tenant reduced his January 2017 payment.

Analysis

After careful consideration of the evidence and testimony before me, and on a balance of probabilities, I find as follows.

I find the Landlord failed to follow the *Residential Tenancy Act* and the *Residential Tenancy Regulation* when attempting to raise the rent for the following reasons: the rent increase was requested earlier than 12 months after the start of the tenancy; was to take effect earlier than

three months after notice was given; was not in the prescribed form; and, was in excess of the allowable amount.

For greater clarity, I reproduce the relevant sections of the *Act* in this my Decision as follows:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

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

Timing and notice of rent increases

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

Amount of rent increase

43 (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 an 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) [Repealed 2006-35-66.]
- (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.

The rent increase is also contrary to Part 4 of the *Residential Tenancy Regulation* which reads as follows:

Part 4 — Rent Increases

Annual rent increase

22 (1) In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

(2) For the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

(3) and (4) Repealed. [B.C. Reg. 234/2006, s. 17.]

[am. B.C. Reg. 234/2006, s. 17.]

The allowable rates are published each year and posted on the residential tenancy branch website and indicate the allowable rent increases for the applicable years are as follows:

2015	2.5%
2016	2.9%
2017	3.7%

The Landlord attempted to raise the rent payable in 2016 by \$25.00. As discussed during the hearing even if it were the case that the Landlord had he followed the *Act* and *Regulation* in terms of proper notice on the approved form, this amount is in excess of what would have been allowable as the most he could have raised the rent in 2016 was \$15.23 (2.9%).

In all the circumstances, the rent increase was illegal and the Tenant is entitled to compensation in the amount he overpaid due to these unauthorized increases.

I find the Tenant is entitled to reimbursement in the amount of **\$307.50** for his payment of rent over the allowable amount as follows:

MONTH	AMOUNT OF OVERPAYMENT
February 2016	\$20.00
March 2016	\$25.00
April 2016	\$25.00
May 2016	\$25.00
June 2016	\$25.00
July 2016	\$25.00
August 2016	\$25.00
September 2016	\$25.00
October 2016	\$25.00
November 2016	\$25.00
December 2016	\$25.00
January 2017	\$37.50
Total	\$307.50

The Tenant is also entitled to recover of his filing fee in the amount of **\$100.00** for compensation in the total amount of **\$407.50**. The Tenant may withhold the sum of **\$407.50** from his February 2017 rent such that he shall pay \$117.50 for rent for February 2017 and \$525.00 for each month thereafter until the rent is raised in accordance with the *Residential Tenancy Act* and the *Residential Tenancy Regulation*.

Conclusion

The Landlord failed to follow the *Residential Tenancy Act* and the *Residential Tenancy Regulation* as: the rent increase was requested earlier than 12 months after the start of the tenancy; was to take effect earlier than three months after notice was given; was not in the prescribed form; and, was in excess of the allowable amount.

The Tenant is entitled to reimbursement of the amount paid in the amount of **\$307.50** in addition to recovery of the **\$100.00 filing fee** and therefore may withhold the sum of **\$407.50** from his February 2017 rent such that he shall pay \$117.50 for rent for February 2017 and \$525.00 for each month thereafter until the rent is raised in accordance with the *Residential Tenancy Act* and the *Residential Tenancy Regulation*.

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 24, 2017

Residential Tenancy Branch