



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, FF

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- An Order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*;
- To dispute an additional rent increase pursuant to section 43 of the *Act*; and
- A Monetary Order pursuant to section 72 of the *Act* to recover the filing fee of this application from the landlord.

The tenant appeared at the hearing, the landlord did not. The tenant testified that she served the landlord with her evidentiary package and Application for Dispute Resolution by Registered Mail on January 13, 2017. A Canada Post tracking number was provided to the hearing and included as part of the tenant’s evidentiary package. Pursuant to sections 88, 89 and 90 of the *Act* the landlord is deemed to have been served with the evidentiary package and the Application for Dispute Resolution on January 18, 2017.

Issue(s) to be Decided

Should the landlord be directed to comply with the *Act* and not raise rents above the legislated amount of 3.7%?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenant provided undisputed testimony, along with a copy of her residential tenancy agreement demonstrating that this was a month to month lease that began on October 1, 2015. Rent is \$995.00 per month and a damage deposit of \$500.00 continues to be held by the landlord.

The tenant explained that on October 24, 2016 she received notice of a rental increase that was to take effect February 1, 2017. The rental increase on the notice was above the legislated 3.7% allowable under section 43 of the *Act*.

A copy of the Notice of Rent Increase was provided to the hearing demonstrating that the landlord had calculated the rent increase based on a rent of \$1,025.00. When asked to comment on this discrepancy, the tenant stated that this sum reflected a \$30.00 charge for parking that she had previously used. She noted that on January 9, 2017 she informed the landlord that she would no longer be using the parking spot and asked that the rental increase be reflected to correspond with the true amount of rent, \$995.00.

The tenant submitted documentation to the hearing that the true rental increase should be \$36.82, bringing her rent to \$1,031.82 per month, not the \$1,063.00 requested.

Analysis

The tenant testified that prior to October 24, 2016 the landlord had never issued a rental increase on her unit.

Section 43 of the *Act* states that the landlord may impose a rent increase *only* up to

- (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.

I refer the landlord to <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases> so that he may gather further information on the allowable rent increases prescribed by the legislation and the proper process for notifying a tenant of a rent increase.

The landlord issued a Notice of Rent Increase that exceeded that allowed under the *Act*, Part 4 of the *Residential Tenancy Regulation* and the subsequent *Regulation* establishing the maximum rent increase for 2017 as 3.7%. I find that the tenant's monthly rent remains at \$995.00, the amount specified in the tenant's original tenancy agreement. This rent remains in place until revised in accordance with the *Act*.

Since the tenant was successful in her application, she may, pursuant to section 72 of the *Act* recoup the filing fee from the landlord.

The tenant is issued a Monetary Order of \$168.00 to reflect the \$68.00 in rent that she overpaid in February 2017, along with a return of the \$100.00 filing fee. Using the offsetting provisions contained in section 72 of the *Act*, the tenant may withhold this amount from future rent, in lieu of pursuing a Monetary Order.

Conclusion

The tenant is issued a Monetary Order of \$168.00. This may be enforced as an Order in the Small Claims division of the Provincial Court of British Columbia. Alternatively, this amount may be deducted from a future rental payment.

The tenant was successful in her application to have the landlord comply with the *Act* pursuant to section 62. The landlord is directed to only increase the rent within the allowable legislated limit. The current monthly rent remains at \$995.00, until revised 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: February 9, 2017

Residential Tenancy Branch