



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSHORE CANADA VENTURES ULC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      mndc, olc, ff

### Introduction:

The tenant seeks a monetary order from the landlord, to recover an overpayment of rent.

Both the landlord and tenancy were represented at the hearing and provided testimony. Written evidence was properly exchanged in advance of the hearing. There are no issues as to service of the claim, of the written evidence.

### Issues to be decided:

1. When a fixed term tenancy ends but the tenant does not vacate, is a landlord permitted to enter into a new fixed term tenancy agreement for any increase in rent, or must the rent increase in the new agreement comply with the Residential Tenancy Act and regulations for allowable rent increases?
2. Is the current corporate landlord liable for an alleged illegal rent increase over the entire 8 year tenancy in circumstances where there was a change of corporate landlord partway through, and when the tenant took no steps to mitigate his loss?

### Background and Evidence:

The tenant first moved into the subject rental premises on or about April 16, 2009. A written fixed term tenancy agreement was entered into, with the landlord at the time (ROVULC), and monthly rent was \$3,300. A security deposit of \$1,650 was paid. The fixed term ended April 30, 2010, and the tenancy continued on a month to month basis. A new month to month tenancy agreement of April 30, 2010 increased the rent to \$3,300, and another dated December 22, 2011 increased the rent to \$3,500. On February 1, 2012, a written fixed term tenancy was entered into, for monthly rent of \$4,000.

On April 2, 2014, a written fixed term tenancy agreement was entered into with a new corporate landlord (BCULC) who remains the current landlord. The new monthly rent was \$4,000. A security deposit of \$1,650 was carried forward from the previous tenancy. A subsequent fixed term tenancy agreement of April 1, 2015 increased the rent to \$4,100. Further agreements continued the tenancy without an increase in rent. Then, in a fixed term tenancy agreement of October 1, 2016 (for 5 months), the rent agreed to was \$5,000.

No Notice of Rent Increase has ever been given to the tenant by either landlord. The more recent tenancy agreements all provide that at the end of the fixed term, the tenancy ends, and the tenant must vacate the premises. The tenant, however, has remained in possession throughout the entire period. No further security deposit was ever paid after the initial deposit. A condition inspection occurred when the tenancy first began in 2009, and a Condition Inspection Notice prepared at that time by the original landlord. No further Condition Inspection Notice has ever been prepared by either landlord.

The tenant now alleges that the rent increases he has paid have exceeded the allowable rent increases permitted by law, and seeks recovery of such increases that are above the permitted increases.

The landlord submits that these were not rent increases, but rather that when the tenant's fixed term tenancies ended, new tenancy agreements were entered into, and a landlord is permitted to set a new rent at the start of a new tenancy agreement. The tenant agreed to pay the new rents, and signed the tenancy agreements that clearly indicated the new amount of rent.

Analysis:

Although many of the signed tenancy agreements were for a fixed term, and indicated that the tenancy would end at the end of the term, in fact the tenancy never ended. The tenant has remained in possession throughout, whereas a change in occupancy is a hallmark of a new tenancy having occurred. No move-out condition inspections ever occurred, as are required when a tenancy ends. No move-in condition inspection occurred, as is required when a new tenancy begins. No new forwarding address by the tenant was ever provided, as is required when a tenancy ends. The security deposit was never returned to the tenant, as would be required when a tenancy has ended. No new security deposit was paid, as would be required when a new tenancy begins.

Section 43 of the Residential Tenancy Act governs the issue of rental increases for a continuing tenancy, and the mechanics of such increases is explained in Policy Guideline 37. The legislation permits a landlord to impose a rent increase up to the amount calculated in accordance with the regulations or as ordered by an arbitrator on application. A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least 3 months before the increase is to take effect. The tenant's rent can only be increased once every 12 months. The increase may be up to, but not greater than, the percentage amount calculated as the inflation rate + 2%, and the allowable percentage rent increases for each calendar year are published by the Residential Tenancy Branch on the Branch website at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

A landlord who desires to increase a tenant's rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount. If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to an arbitrator for approval of that rent increase.

Importantly, however, as set out in Guideline 37, the landlord must still follow requirements regarding the timing and notice of rent increases, and the tenant's written agreement to a proposed rent increase must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars), and the tenant's agreement to that increase. The Guideline recommends that the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Payment of a rent increase in an amount more than the allowed annual increase does not constitute an agreement to a rent increase in that amount.

Unless a tenant agrees to a rent increase of an amount that is greater than the prescribed amount, a landlord must apply for dispute resolution for approval to give the additional rent increase. No application has occurred in this case.

The rent increases in the present case exceed the permit increases, and the parties are not permitted to ignore the requirements of the Act regarding permitted increases. Any agreement that fails to abide by the Act and regulations regarding rent increases is unenforceable. The tenant is therefore entitled to a rebate of overpayment of rent.

Calculating the amount, however, is challenging given that there was a change in corporate landlord part way through the tenancy, and given that the tenant has claimed only as against the current landlord. I further note that although the tenant has the right to seek compensation for his loss as set out in section 7(1) of the Act, section 7(2) requires that the tenant must do whatever is reasonable to minimize the loss. I find it unreasonable that the tenant has made no effort to mitigate his loss over the 8 year duration of this tenancy. In the circumstances of this case, given that amount of time that has passed, and given that there was a change in the corporate landlord partway through, it would have been reasonable at the very least for the tenant to make a formal claim against the former corporate landlord, at such time as he became aware of the change of landlord. This would have mitigated his loss going forward, and also ensured that the claim was made as against the proper legal entity. The tenancy agreements entered into evidence are not all complete, and based upon the actual evidence provided to me, I find that the current corporate entity first entered into a written tenancy agreement with the tenant April 1, 2014. Accordingly, even if the current landlord is liable as successor in title for all of the illegal rent increases, I will consider the tenant's claim only from April 1, 2014 going forward, which coincides to the date the new landlord first entered into an agreement with the tenant.

In 2015, the allowable increase was 2.5 %, and the increase of rent from \$4,000 to \$4,100 on April 1, 2015 was therefore within the allowable increase. The rent again increased to \$5,000 on October 1, 2016, whereas the allowable increase was 2.9%, or to \$4,289.90. Over the next six months (until and including rent for March, 2017) the tenant has paid rent of \$30,000, whereas the allowable rent would have translated to a total of \$25,739.40, thus resulting in an overpayment of \$4,260.60. The landlord is ordered to pay this sum to the tenant, as illegally collected rent. As the tenant is successful in this claim, I further order that the landlord pay \$100.00 to the tenant,

representing recovery of the tenant's filing fee. The balance of the tenant's claim is dismissed.

Conclusion

The tenant is entitled to recover the sum of \$4,360.60 from the landlord.

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: March 20, 2017

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Residential Tenancy Branch