



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coronet Realty Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended an agent for the tenant and an agent for the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order to recover increased rent that was not compliant with the *Residential Tenancy Act (Act)* and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 43, 67, and 72 of the *Act*.

### Background and Evidence

The parties believed the tenancy began in July 1993 with a security deposit of \$350.00 paid. The landlord's agent submitted that they took over property management of the residential property in October 2009 and entered into a new tenancy agreement effective February 1, 2010 and that the tenant vacated the rental unit in April 2017.

Neither the landlord's agent nor the tenant's agent could confirm for me how much rent was from October 2009 to January 2010, however there was a handwritten notation on a letter written by the tenant submitted by the landlord that states "\$956.00 - \$1206" – the parties did agree it was under \$1,000.00. The tenant's written submission also indicated rent had been \$956.00.

The landlord submitted a copy of a tenancy agreement signed by the parties on January 28, 2010 for a month to month tenancy beginning on February 1, 2010 for a monthly rent of \$1,150.00 due on the 1<sup>st</sup> of each month.

The tenant's agent submitted that the landlord failed to comply with the *Act* by imposing a rent increase in an amount that was higher than the annual allowable amount. The tenant's agent acknowledged that the tenant agreed to the rent increase but that she only did so under duress. The agent stated that the tenant lived in fear that she would be evicted if she did not agree to the rent increase. The agent referred specifically to a letter submitted into evidence by the landlord dated January 27, 2010 where the landlord's agent wrote:

"As per letter sent on January 18<sup>th</sup>, 2010 you will need to let us know if you wish to stay with the new rent. Our position has not changed since the last time we met. We are working with the owner to decide whether he wish to move forward in the renovations. Should you not be in agreement with the new rent (\$1,150.00) we will proceed with the eviction as discussed." [reproduced as written]

The tenant's agent stated that the tenant had not pursued disputing the issue with the Residential Tenancy Branch prior to the submission of this Application because she did not have any other suitable accommodation to move to and now that she has secured new accommodation she had no fear of losing her home so she seeks return now of \$15,714.00 for an overpayment of rent from February 1, 2010 to April 30, 2017.

The tenant's agent also submitted that she delayed her claim because she knew that she had up until 2 years after the tenancy ended to do so. He further stated that perhaps her injury in 2012 caused her to delay.

The landlord submitted that when they took over management of the property the owners determined that they needed to charge more rent for the rental unit. However instead of displacing the current tenant they offered that if she agreed to a rent increase they would continue the tenancy but if she did not they would end the tenancy to complete renovations to the unit.

The landlord's agent submitted that the landlord originally wanted to increase the rent to \$1,206.00 but that the tenant was not willing to pay that much and so over the course of 2 ½ to 3 months they negotiated with the tenant until they reached the above noted agreement that was signed to be effective February 1, 2010.

The landlord submitted several pieces of correspondence between them and the tenant, including a letter dated November 27, 2009 confirming she had received a copy of the tenancy agreement the landlord had sent her.

The next was a lengthy letter from the tenant dated December 28, 2009 in which the tenant lays out her conditions for signing a new tenancy agreement. The letter begins: "I have reviewed the Tenancy Agreement you recently sent me. There are several items I am not in agreement with, or wish to amend or add to. They are:...." The tenant then listed her counter proposal including a rent increase to \$1,050.00 as well as lists a number of other demands and conditions.

The correspondence from the landlord begins with a letter from the landlord's agent dated November 20, 2009 in which the agent wrote: "If you're content with the terms and conditions please sign it, return it and we'll proceed along the lines we've discussed. We have marked off what we think is included. Please check off any other items that are also included." This included an attached tenancy agreement

In a response letter dated January 18, 2010 the landlord wrote:

"The landlord needs more income to make holding the property worthwhile. If he can't accomplish this through a negotiated increase with you he'll have to take the second route that we discussed. In view of your short term plans it would be nicer for all parties if you could stay." [reproduced as written]

The tenant also submitted a number of emails from the period of October 14, 2011 to March 28, 2017 documenting a number of complaints to the landlord. She does not provide any copies of any response or what the outcome of any of the issues she raised was.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 43(1) of the *Act* states a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director or agreed to by the tenant in writing. The tenant submitted in written submissions, and I have confirmed, that the allowable annual rent increase for 2010 was 3.2%.

As the parties signed a new tenancy agreement on January 28, 2010 for rent in the amount of \$1,150.00 I find the landlord increased the rent in accordance with an agreement by the tenant in writing to rent in the amount paid. As a result, I find the landlord increased the rent in accordance with the *Act*.

In the absence of any submission by the parties on the definition of duress I go to a standard definition that duress is compulsion by threat. I am not convinced by the tenant's submissions that she signed the new tenancy agreement under duress. I make this finding for a number of reasons, including:

- I find the landlord's documentary submissions confirmed that the parties were negotiating over a significant length of time to come to an agreement amenable to both parties;
- I find the landlord's position on a number of issues was quite malleable and continued to negotiate until the final agreement was signed by both parties;
- I find that the landlord's agent's provision and reminders to the tenant that the landlord may choose to end the tenancy to complete renovations to be the restating of their position should the parties not be able to reach an agreement and not a threat;
- I note the tenant, in her letter of December 28, 2009, indicated that her starting point for negotiations was a rental increase of 9.8% when the annual rate was only 3.2%. As a result, I find the tenant was not opposed to a rent increase over and above the allowable rates;
- I also am not persuaded by the tenant's agent's submission that the tenant feared eviction. I find the tenant's abilities to stand up for herself and issues she raised during the tenancy are confirmed not only by the emails she submitted into evidence but also, in particular, her December 28, 2009 letter to the landlord; and
- Finally, I find that would be reasonable for a tenant who was so unhappy with the rent increase that she was paying and living with the fear of eviction it is unlikely that she would have anywhere near 7 years to find suitable accommodation in a new location.

Based on the above, I find the tenant has failed to establish that she was compelled to sign the new tenancy agreement or that she did so under duress. Therefore, I confirm my finding above that by having the tenant agreeing to the new rent amount the landlord has not contravened the *Act* and as such the rent increase is allowed.

As I have found that the rent increase was allowed, I find the tenant is not entitled to recover any of the rent monies paid from February 1, 2010 to April 30, 2017.

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and without leave to reapply.

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: September 01, 2017

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Residential Tenancy Branch