



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      DRI, FF

### **Introduction**

This hearing was convened in response to the tenant's application pursuant to the *Residential Tenancy Act* (the Act) to dispute the landlord's attempt to impose an additional rent increase and to recover the filing fee associated with the application.

The tenant and landlord attended the hearing. The landlord was represented by legal counsel. The parties were provided opportunity to mutually resolve their dispute no avail. The parties were provided opportunity to make prior submissions of evidence. Despite the provision of late evidence by the landlord I have accepted all evidence provided to this matter and as exchanged by the parties. The parties were given opportunity to provide testimony and present their evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Should the rent increase be allowed?

Is the tenant entitled to recover the filing fee?

### **Background and Evidence**

The relevant evidence in this matter is as follows. The rental unit consists of a two bedroom suite. The payable monthly rent is \$900.00. I have benefit of a letter to the tenant from the landlord signed and dated April 03, 2017 in which the landlord states, in

part, “I will be increasing the rent from \$900.00 to \$1100.00 effective on July 01, 2017” and, “I plan on cutting WIFI at the end of April” – as written. The landlord's counsel testified that the landlord was seeking to place the tenant on notice of their intention to increase the rent and planned on obtaining the tenant's signature. The tenant declined the landlord's increase of rent. The landlord's counsel testified the tenant and the landlord arrived at a verbal agreement the tenant would vacate by July 01, 2017. The tenant testified they and the landlord had *no* oral agreement respecting them vacating, however that they were not opposed to paying the legally permitted increase in rent. The tenancy continued with the landlord not collecting an increase in the rent. In August 2017 the landlord sought from the tenant the \$200.00 increase in the rent as of July 01, 2017, prompting the tenant to apply for dispute resolution.

The tenant testified they did not agree to an additional rent increase and did not agree to vacate the rental unit, nor notified the landlord they were ending the tenancy as required by the Act. The landlord's counsel argued that the tenant failed to pay the additional rent increase requested by the landlord and further failed to vacate the unit as agreed upon.

### **Analysis**

*The full text of the Act, Regulation, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

Despite the assertions of the landlord I find there is insufficient, if no evidence, of an oral agreement between the parties in respect to an increase of the rent or that the tenant would vacate the rental unit. I find there is no evidence of written agreement between the parties for an increase in rent. I find there is no evidence of an agreement in writing that the tenant would vacate, or any notice in writing to the landlord that the tenant was ending or would end the tenancy.

**Part 3 of the Act addresses What Rent Increases Are Allowed.**

**Section 41** of the Act states a landlord must not increase rent except in accordance with this part.

**Section 42(3)** of the Act states a notice of a rent increase must be in the approved form.

**Section 43 - Amount of rent increase**, in parts relevant to this matter states; (emphasis mine)

**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.**

**43 (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.

**Part 4** of the Act addresses **How To End a Tenancy**

**Section 44 - How a tenancy ends**, in parts relevant to this matter states; (emphasis mine)

**44 (1)** A tenancy ends **only if one or more of the following applies:**

**(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:**

**(i) section 45 [tenant's notice];**

**(i.1) section 45.1 [tenant's notice: family violence or long-term care];**

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

**(c) the landlord and tenant agree in writing to end the tenancy;**

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

**Section 45 – Tenant’s notice**, in parts relevant to this matter states; **(emphasis mine)**

**45 (1)** A tenant may end a periodic tenancy **by giving the landlord notice to end the tenancy** effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

and,

(4) A notice to end a tenancy given under this **section must comply with section 52 [form and content of notice to end tenancy]**.

**Section 52 – Form and content of notice to end tenancy**, states; **(emphasis mine)**

**52 In order to be effective, a notice to end a tenancy must be in writing** and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

(e) when given by a landlord, be in the approved form.

Section 43(1) of the Act states in part that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, or agreed to by the tenant in writing. The rent increase imposed by the landlord did not correspond to the 3.7% allowable rate for 2017. The Act further states that; a landlord may request an amount that is greater than the allowable amount by making an application for dispute resolution, which the landlord has not. In that context I find that the landlord did not comply with the Act and therefore the increase is not allowed.

Sections 44, 45 and 52 of the Act prescribe the means by which a tenancy ends and the obligations of a landlord or a tenant to provide any notice toward an end to the tenancy, in writing and as further prescribed. As a result I find that the tenancy could not and has not legally ended.

### **Conclusion**

The rent increase is not allowed. The tenancy continues in accordance with the Act and tenancy agreement.

Since the tenant was successful in their application **I Order** they may deduct of \$100.00 from the next month's rent to recover the filing fee for this application.

*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: November 21, 2017

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Residential Tenancy Branch