



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      DRI

## Introduction

This hearing dealt with the tenant's application to dispute an increase in rent pursuant to sections 13 (2) (f) (iv), and section 40 of the *Residential Tenancy Act* ("the *Act*").

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant's legal counsel D.O. (counsel) also attended the hearing and indicated that they would be the primary speaker on behalf of the tenant.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they served the landlord with the Tenant's Application for Dispute Resolution (Application) by way of registered mail on September 21, 2017. The landlord confirmed that they received the Application. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The landlord testified that they served the tenant with their evidentiary package by way of registered mail on November 21, 2017. The tenant acknowledged receipt of the landlord's evidentiary package. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The landlord testified that they only received the tenant's evidentiary package on November 29, 2017, and has not had an adequate chance to respond to it. The tenant confirmed this service.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (the Rules) states that documentary evidence that is intended to be relied on at the hearing by the applicant must be received by the respondent not less than 14 days before the hearing. I find that the tenant did not serve the landlord with their evidence in accordance with the Rules and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenant's evidence. For this reason the tenant's documentary evidence is not accepted for consideration.

The tenant acknowledged receipt of the landlord's letter on August 24, 2017, notifying the tenant of a rent increase to account for the additional occupant effective as of September 01, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with this letter.

Issue(s) to be Decided

Is the landlord entitled to increase the monthly rent for an additional occupant?

Background and Evidence

The landlord provided evidence showing that this tenancy commenced on December 01, 2013, with a current monthly rent of \$1,371.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$650.00. The tenant and three minors are listed on the tenancy agreement as occupants of the rental unit. Term six of the tenancy agreement states:

*Subject to clause 13, Additional Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1 or 2 above, the rent will increase by \$250.00 per month, effective from the date of his occupancy. The acceptance by the landlord of any additional occupant does not otherwise change this Agreement or create a new tenancy.*

The landlord also entered into written evidence:

- A copy of a timeline of events from August 21, 2017, to November 13, 2017, with references to relevant corresponding evidence;
- A copy of a letter from the landlord to the tenant, dated August 24, 2017, notifying the tenant of an increase in the monthly rent, in the amount of \$250.00, for an additional occupant (Occupant A) as per the tenancy agreement to become effective September 01, 2017;
- A copy of a letter from the tenant to the landlord dated August 30, 2017, notifying the landlord that the tenant's son has moved out of the rental unit and that Occupant A brings the amount of occupants in the rental unit to the same number listed on the tenancy agreement. The tenant further states in this letter that they will not comply with the landlord's requested increase in the monthly rent;

- A copy of a notice from the landlord to the tenant notifying the tenant that there is an unauthorized occupant living in the rental unit;
- A copy of an e-mail from Occupant A and the tenant to the landlord advising the landlord that they are willing to sign a new tenancy agreement but do not agree to the increase in rent;
- A copy of a Notice of Rent Increase form dated August 21, 2017 showing the rent being increased effective by \$50.00 as of December 01, 2017;
- Copies of seven pictures taken showing the additional occupant's van at the rental unit;

Counsel requested to provide the tenant's testimony first. The landlord did not object. Counsel stated that this hearing is based on the term in the tenancy agreement concerning additional occupants and whether the landlord is entitled to an increase in rent as per term six of the tenancy agreement.

Counsel submitted that Occupant A moved into the rental unit as of September 01, 2017, and when the landlord became aware of this, she advised the tenant that the landlord has the right to approve all occupants in the rental unit. Counsel stated that the landlord approved Occupant A contingent on the tenant paying additional rent in the amount of \$250.00 each month as per term six of the tenancy agreement. Counsel submitted that term 13 of the tenancy agreement stipulates that only people on the agreement may reside at the rental unit and that the other named occupants on the tenancy agreement are the tenant's children.

Counsel contended that the landlord thought that there were a total of five occupants in the rental unit including the tenant. Counsel submitted that the tenant advised the landlord that her oldest son had moved out of the rental unit three years ago. Counsel submitted that there are a total of four occupants in the rental unit, including the tenant and Occupant A, which is the same number of occupants on the tenancy agreement at the time it was signed. Counsel argued that clause six does not apply as there are no additional occupants, only the same amount as on the tenancy agreement with Occupant A in place of the tenant's oldest son.

The landlord testified that Occupant A has been living in the rental unit since sometime in August 2017. The landlord stated that she gave an application for tenancy to Occupant A, which he only half filled out. The landlord submitted that eventually

references were provided by Occupant A. The landlord stated that she would accept Occupant A as a part of the tenancy agreement if they paid the additional rent as per term six of the tenancy agreement. The landlord stated that Occupant A did provide a cheque for an additional \$250.00 for September 2017 but that the landlord has not cashed the cheque. The landlord submitted that she offered a new lease to the tenant and Occupant A but they have not signed it.

Counsel stated that the tenants did not understand what the rules were when they gave the landlord a cheque for \$250.00. Counsel submitted that the tenants were happy to sign a new lease, just not with an increase of \$250.00 per month. Counsel referred to section 13 (2) (f) (iv) of the *Act* regarding additional occupants and stated that this section supports the tenant's position that the landlord cannot charge more rent for changing occupants, only for adding them.

The landlord stated that that she has served the tenant with a One Month Notice to End Tenancy for Cause for the unauthorized occupant in the unit, which is to be heard by a different arbitrator with the Residential Tenancy Branch on December 12, 2017.

### Analysis

Section 13 (2) (f) (iv) of the *Act* states that a tenancy must set out the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

Section 40 states that a rent increase as defined in Part 3 of the *Act* does not include an increase in rent that is for one or more additional occupants and is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) of the *Act*.

Based on the affirmed testimony and evidence of both parties, I find that the number of occupants in the rental unit is the same as the number of occupants listed on the tenancy agreement. I find that section 13 (2) (f) iv) of the *Act* only allows for the monthly rent to change if the number of occupants changes. I find that term six of the tenancy agreement refers to an increase in the rent for additional occupants, however; I have found that the number of occupants has not changed. I find that neither the tenancy agreement nor the *Act* allows for a rent increase if one occupant moves out of the rental unit and another occupant moves into the rental unit in their place.

Section 41 of the *Act* states that a landlord must not increase rent except in accordance with sections 42 and 43 of the *Act*, which only allow for a rent increase served in the approved form at least 3 months before the effective date of the increase, by an amount

calculated in accordance with the regulations. The current allowable rent increase for 2017 is 3.7%.

For the above reasons I find that the landlord's letter to increase the rent dated August 24, 2017, to increase the monthly rent by \$250.00 effective as of September 1, 2017, does not comply with the *Act* or the tenancy agreement.

The landlord's letter to increase the rent by \$250.00 dated August 24, 2017, is dismissed.

I find that the monthly rent for September, October and November 2017 remains at \$1,371.00. The tenant has not disputed the landlord's Notice of Rent Increase dated August 21, 2017, which I find is served in the approved form and effective December 01, 2017, rent became \$1,421.00.

I note that I make no findings as to whether Occupant A is authorized by the landlord to reside in the rental unit

#### Conclusion

I cancel the landlord's letter to increase the rent for additional occupants dated August 24, 2017.

The tenant is successful in their Application to dispute an increase in rent.

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: December 11, 2017

---

Residential Tenancy Branch