



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Tenants sought to dispute a rent increase.

The hearing was scheduled for December 19, 2017. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

### Background Evidence

The Tenant, B.S., testified that the tenancy began December 2005. The Landlord named on the tenancy agreement, and the Tenants' Application for Dispute Resolution, purchased the rental property and entered into a written tenancy agreement with the Tenants on July 1, 2017. At the time of the transfer of sale, the rent was \$650.00 per month. The tenancy agreement provided that rent was increased to \$700.00 per month.

The Tenants disputed the rent increase and first applied for dispute resolution on July 12, 2017. The original application was set to be heard September 21, 2017 at which time neither party called into the hearing and the application was dismissed with leave to reapply. The Tenants reapplied on October 11, 2017. Their second application was set before me on this date, December 19, 2017.

The Tenants paid rent in the amount of \$700.00 for July 2017, August 2017, September 2017, October 2017, November 2017 and December 2017.

### Settlement and Conclusion

During the hearing the parties resolved matters by mutual agreement. The terms of their agreement is recorded in this my Decision and Order pursuant to section 63 of the

*Residential Tenancy Act* and Rule 8.4 of the *Residential Tenancy Branch Rules of Procedure*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

The terms of their settlement follow.

1. Paragraph 3(a) of the residential tenancy agreement, signed July 3, 2017, shall be amended to provide that monthly rent is payable in the amount of \$650.00.
2. Rent shall continue at \$650.00 per month until raised in accordance with Part 3 of the *Residential Tenancy Act* and Part 4 of the *Residential Tenancy Regulation*.
3. As the Landlord collected the sum of \$700.00 per month commencing July 1, 2017, the parties agree that the Tenants overpaid rent in the amount of \$50.00 per month for six months; consequently, the Tenants are entitled to compensation in the amount of \$300.00. The Tenants shall be permitted to reduce their January 2018 rent by \$300.00 as compensation for the illegal rent increase such that they will pay \$350.00 January 2018.

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 19, 2017

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Residential Tenancy Branch

Part 3 of the *Residential Tenancy Act* provides as follows:

### **Part 3 — What Rent Increases Are Allowed**

#### **Meaning of "rent increase"**

**40** In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f)
- (iv) [*requirements for tenancy agreements: additional occupants*].

## **Rent increases**

**41** A landlord must not increase rent except in accordance with this Part.

## **Timing and notice of rent increases**

- 42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
  - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

## **Amount of rent increase**

- 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.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (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.
- (4) [Repealed 2006-35-66.]
- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Part 4 of the *Residential Tenancy Regulation* provides as follows:

## **Part 4 — Rent Increases**

### **Annual rent increase**

**22** (1) In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

(2) For the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

(3) and (4) Repealed. [B.C. Reg. 234/2006, s. 17.]

[am. B.C. Reg. 234/2006, s. 17.]

### **Additional rent increase**

**23** (1) A landlord may apply under section 43 (3) of the Act [*additional rent increase*] if one or more of the following apply:

(a) after the rent increase allowed under section 22 [*annual rent increase*], the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit;

(b) the landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that

(i) could not have been foreseen under reasonable circumstances, and

(ii) will not recur within a time period that is reasonable for the repair or renovation;

(c) the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;

(d) the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs could not have been foreseen under reasonable circumstances;

(e) the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

(2) If the landlord applies for an increase under paragraph (1) (b), (c), or (d), the landlord must make a single application to increase the rent for all rental units in the residential property by an equal percentage.

(3) The director must consider the following in deciding whether to approve an application for a rent increase under subsection (1):

(a) the rent payable for similar rental units in the residential property immediately before the proposed increase is intended to come into effect;

(b) the rent history for the affected rental unit in the 3 years preceding the date of the application;

(c) a change in a service or facility that the landlord has provided for the residential property in which the rental unit is located in the 12 months preceding the date of the application;

- (d) a change in operating expenses and capital expenditures in the 3 years preceding the date of the application that the director considers relevant and reasonable;
- (e) the relationship between the change described in paragraph (d) and the rent increase applied for;
- (f) a relevant submission from an affected tenant;
- (g) a finding by the director that the landlord has contravened section 32 of the Act [*obligation to repair and maintain*];
- (h) whether, and to what extent, an increase in costs with respect to repair or maintenance of the residential property results from inadequate repair or maintenance in a previous year;
- (i) a rent increase or a portion of a rent increase previously approved under this section that is reasonably attributable to the cost of performing a landlord's obligation that has not been fulfilled;
- (j) whether the director has set aside a notice to end a tenancy within the 6 months preceding the date of the application;
- (k) whether the director has found, in dispute resolution proceedings in relation to an application under this section, that the landlord has
  - (i) submitted false or misleading evidence, or
  - (ii) failed to comply with an order of the director for the disclosure of documents.

(4) In considering an application under subsection (1), the director may

- (a) grant the application, in full or in part,
- (b) refuse the application,
- (c) order that the increase granted under subsection (1) be phased in over a period of time, or
- (d) order that the effective date of an increase granted under subsection (1) is conditional on the landlord's compliance with an order of the director respecting the residential property.

(5) If the total amount of the approved increase is not applied within 12 months of the date the increase comes into effect, the landlord must not carry forward the unused portion or add it to a future rent increase, unless the director orders otherwise under subsection (4).

[am. B.C. Reg. 234/2006, s. 18.]