



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL DRI LRE OLC FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their affirmed testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing – the landlord confirmed receipt of the tenant's Application for Dispute Resolution and attached materials and the tenant confirmed receipt of the landlord's evidence submitted for this hearing.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled or is the landlord entitled to an Order of Possession?

If the tenancy continues, should the landlord's right to enter the unit be restricted?

Are the tenants entitled to an order that the landlord comply with the Act with respect to rent and are the tenants entitled to dispute the landlord's rent increases?

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on October 20, 2012 as a month-to-month tenancy with a monthly rent of \$1100.00. The tenant, co-tenant (wife) and son reside in the rental unit. The current rental amount paid by the tenants, as set by the landlord, is \$1400.00 payable on the first of each month. At the outset of the tenancy, the tenants paid a \$500.00 security deposit that the landlord holds in trust.

The tenants testified that the landlord has imposed an escalating series of rent increases throughout the tenancy. The tenants testified that the landlord raised the rent in 2015 by \$100.00 for a new rental amount of \$1200.00. The tenants each provided undisputed testimony that the landlord raised the rent from \$1200.00 to \$1300.00 for January 2018 and from \$1300.00 to \$1400.00 for February 2018. The tenants testified that when the landlord advised that the April 2018 rental amount would be \$1500.00, they sought advice and ultimately applied to dispute the increases arguing that the rent increases were not imposed in accordance with the Act. They made their application on March 5, 2018 and served it to the landlord on March 12, 2018.

On March 13, 2018, the landlord issued a 2 Month Notice to End Tenancy: the tenants amended their application for dispute resolution to include an application to cancel the landlord's notice to end tenancy. The tenants argued that it is very suspicious that the landlord issued a Notice to End Tenancy one day after the receipt of the tenants' application for dispute resolution. The tenants also submitted that they believe the landlord's real motive is to be able to increase the rent substantially and since the tenants have now resisted the rent increase(es), they are being asked to move out.

A copy of the 2 Month Notice issued on March 13, 2018 by the landlord to the tenant was submitted into evidence for this hearing. The 2 Month Notice required the tenants to end this tenancy by May 31, 2018. The landlord cited the following reasons for the issuance of the Notice:

*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse*

In a letter to the tenants attached to the 2 Month Notice, the landlord wrote that a family member would move into the rental unit. At this hearing, the landlord testified that her brother would move into the rental unit. She submitted a copy of emails to confirm that her brother intends to occupy the rental unit. The first email submitted by the landlord for this hearing read,

*March 13, 2018: Thank you for agreeing to let us stay in your house at {residential address} as we agreed. It would be a great help on our move back to B.C. I am now finalizing our plans to move their [sic] in June as we have talked about last month and also last week. Please let me know as well whenever your place is free...*

A second email dated May 15, 2018 indicated that this person could not contact the landlord and wanted to make sure the rental unit was still available for his family.

After this tenancy began in 2012 with utilities included and an original rental amount of \$1100.00, the landlord began to complain to the tenants about the cost of the utility bills for the rental unit. Several text messages between the parties submitted for this hearing include discussions about the amount of utilities. On more than one occasion in the email correspondence, the landlord indicates she must raise the rent to cover the costs of utilities. She states, on two separate dates in the correspondence, that the tenants are welcome to move-out if they do not want to pay the rent increase.

The parties agree that the tenants' rent has increased from the original \$1100.00 to the landlord's proposed \$1500.00. The increases from the original \$1100.00 payable each month over the course of this six-year tenancy were as follows,

- 2015: increase \$100.00 to \$1200.00 (effective April 2015)
- 2018: increase \$100.00 to \$1300.00 (effective January 2018)
- 2018: increase \$100.00 to \$1400.00 (effective February 2018)
- 2018: increase \$100.00 to \$1500.00 (effective April 2018)

Tenant JB testified that he did not know about the Residential Tenancy Branch ("RTB") limits to rent increases until recently when he sought advice regarding the most recent increase imposed by the landlord. He testified that he paid \$1200.00 in rent from April 2015 to January 2018. He testified that, shortly before January 1, 2018, the landlord advised him that the new monthly rental amount (effective January 1, 2018) would be \$1300.00. He testified that, shortly before February 1, 2018, the landlord advised him that the new monthly rental amount (effective February 1, 2018) would be \$1400.00.

Tenant JB provided undisputed evidence regarding each of these rent increases for this hearing. His co-tenant provided corroborating testimony. He provided undisputed testimony of the increases and provided undisputed testimony that the landlord advised him, in March 2018, that the monthly rental amount (effective April 2018) would be \$1500.00. He provided receipts to show the amounts paid each month over the course of this tenancy. He testified that he did not pay the increased rental amount for April 2018 of \$1500.00. Instead, the tenants paid \$1400.00 for the month of April 2018. The tenant testified that he agreed to pay an additional occupant amount in November & December 2015 and that he did so. He testified that, during that period of time, his family stayed in the rental unit for 1 ½ months.

Tenant JB provided undisputed testimony that the landlord had not provided the tenants with a RTB rent increase form for any of the monthly rent increases during the tenancy. He also testified that the landlord did not provide three months' notice (time before the rent increase took effect) before increasing the rent on four dates during the tenancy. The landlord testified that she did not know she was required to provide any notice of rent increases: she testified that she believed the limit for a rent increase was 10% of the current rental amount.

During the course of this hearing, the landlord explained repeatedly that the utility bills for the residential premises are far higher than she expected. The landlord submitted three utility bills as evidence of the amounts on those bills. The landlord acknowledged that the tenants' residential tenancy agreement with the landlord included utilities within the monthly rental payment however she testified that she had no choice in increasing the rent to pay the utility bills.

As well as applying to recover the overpayment of rent, the tenants sought an order that the landlord comply with the Act by implementing rent increases in compliance with the Act. The tenants also sought an order to limit the landlord's access to the rental unit. The landlord testified that she always asks before going into the rental unit except when there was a leak one time and she told the tenants afterwards that she had been in their unit. The tenants both testified that, much like the rental increases, the landlord does not provide sufficient notices prior to seeking entry into their rental unit.

### Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 2 Month Notice to End Tenancy on March 13, 2018, the landlord claimed that; a close family member will move into the rental unit. Pursuant to Residential Tenancy Policy Guideline No. 2 regarding ending a tenancy for landlord's use discussed the good faith requirement (or honest intent) under this type of notice,

*... Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy...*

When a tenant raises the issue that a landlord may have an ulterior motive for the eviction, the onus falls to the landlord to prove that they are acting in good faith in issuing a 2 Month Notice to End Tenancy for Landlord's Use relying on the ground that the rental unit will be occupied by a close family member. The landlord submitted utility bills that she wrote will prove her position that the tenancy should end. However, I find that the utility bills, regardless of their amount, provides evidence to support the tenants' claim that the landlord's motive in ending this tenancy is to increase the rental amount.

I take into account the landlord's focus on utility bills in her evidence, in her correspondence with the tenants and in her testimony at this hearing. Based on the landlord's focus on the amount of utilities and her increases in rent three times between January 1, 2018 and April 1, 2018, I accept the submissions of the tenant at this hearing that the landlord has an ulterior motive in issuing the 2 Month Notice to End Tenancy.

I find that the landlord's email correspondence evidence submitted for this hearing is insufficient to show that a close family member will move into the rental unit. The email correspondence with a person in another province inquiring about the rental unit has a formal tone and does not reference any familial acquaintance. I am not satisfied by the landlord's testimony that this person is her brother, particularly as she referred to the person in her own materials as a "prospective tenant."

I find that the landlord has failed to rebut the evidence of the tenants provided for this hearing. I find that the tenants' evidence shows that the landlord had an ulterior motive to end this tenancy. Therefore, I find that the landlord did not issue the 2 Month Notice to End Tenancy in good faith. I grant the tenants' application to cancel the 2 Month Notice.

With respect to the rent increases implemented by the landlord, I refer the parties to Residential Tenancy Policy Guideline No. 37. The guideline provides a practical framework with respect to rent increases. Part 3 (sections 40 to 43 of the Act) allows a landlord to *apply* to the Residential Tenancy Branch for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase (an "additional rent increase"). The amount of a basic allowable annual rent increase is set by the Residential Tenancy Branch each year. The current allowable annual rent increase for the year 2018 is 4% of the current monthly rental amount.

It is undisputed that, during this tenancy, the landlord has increased the rent on four occasions in an amount in excess of the basic allowable annual rent increase. It is also

undisputed that the landlord did not apply to increase the rent by an amount greater than the Basic Annual Rent Increase with respect to any of the four rent increases. The landlord claimed that she was not aware of the requirements and limits on annual rent increases under the *Residential Tenancy Act*. Instead, the landlord simply told the tenants that she would raise their rent. The tenants paid this amount out of their own ignorance for the limitations in increasing rent. I accept Tenant JB's testimony that he and his co-tenant paid the rent increase because they were not aware that they had any alternative.

Policy Guideline No. 37 addresses a tenant's agreement to a rent increase,

*A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. **If the tenant agrees to an additional rent increase, that agreement must be in writing.** The tenant's written agreement must clearly set out the agreed rent increase ... and the tenant's signed agreement to that increase. The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. **The landlord must issue to the tenant a Notice of Rent Increase.** .... Tenants must be given three full months' notice of the increase. **Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.***

[emphasis added]

I find that the tenants' payment of the increased rental amounts (beyond the annual allowable amounts) does not constitute an agreement by the tenants to any of the four rent increases.

The landlord increased the rent by amounts greater than the allowable rent increase per year and failed to provide three months' notice of any increase in accordance with section 42 of the Act. The landlord did not apply to raise the rent by an additional amount. As the landlord has not provided a ground that can, with respect to this tenancy, be relied upon to raise the rent and that the landlord has failed to take the appropriate steps in raising the rent and given that the landlord did not follow the Act and Regulations in attempting to increase the rent, I find that the tenants are entitled to compensation (a monetary order) for all overpayments of rent including: an additional \$100.00 from April 1, 2015 to the date of this decision; a further \$100.00 from January 2018 to the date of this decision; and a further \$100.00 from February 2018 to the date of this decision. I note that the tenant testified that he has not paid the rental increase

imposed for April 2018. I issue a monetary award to the tenants including the amounts as follows;

<b>Period of tenancy (by month &amp; year)</b>	<b>Amount of rent paid by tenants</b>	<b>Amount owed by tenants - increase not allowed</b>	<b># of months x overpayment</b>	<b>Amount Overpaid</b>
2012 – 2015 March	\$1100.00	\$1100.00	0.00	\$0.00
April 2015 – Jan 2018	\$1200.00	\$1100.00	33 x 100.00	\$3300.00
January 2018	\$1300.00	\$1100.00	1 x 200.00	\$200.00
Feb - May 2018	\$1400.00	\$1100.00	4 x 300.00	\$1200.00
<b>Monetary amount owed by the landlord to the tenants/overpayment</b>				<b>\$4700.00</b>

I note that I have not included the additional occupant amount agreed between the parties in 2015 in my calculations: I will not interfere with that agreement from over 2 years prior for a limited period of time.

I also note that I have not allowed the landlord to increase the rent during the course of this tenancy for the allowable annual monthly rental increase by the Residential Tenancy Branch. As previously stated, the landlord did not comply with any of the requirements with respect to issuance of a rent increase to the tenants. When the landlord intends to increase the rent by the annual allowable amount, the landlord is still required to inform the tenants three full months prior in writing by way of a rent increase form. As the landlord did not comply with the Act, the landlord is not entitled to any backdated rental increase.

With respect to the amount issued to the tenants based on the above calculations, I have not included June 2018 rent as that amount had not been paid by the tenants prior to the hearing of this dispute: I order that, if the tenants have paid rent to the landlord for the month of June 2018, and if that amount is in excess of \$1100.00, the difference paid by remitted back to the tenant by the landlord within 15 days of this decision.

I also issue an order that the landlord comply with the Act by adhering to sections 40, 41, 42 and 43 of the Act with respect to rent increases as well as all other sections of the Act. I issue an order that the landlord comply with section 70 of the Act by ensuring she provides sufficient notice to enter the rental unit from the date of this decision forward. The landlord must know her obligations under the Act, the Regulation and all other relevant legislation.

As the tenants were successful in their application, I find that the tenants are entitled to recover their \$100.00 filing fee: this amount will be added to the rent overpayment amount for a total monetary order to the tenants of \$4800.00.

Conclusion

**I cancel the landlord's 2 Month Notice to End Tenancy** dated March 13, 2018. The tenancy shall continue.

**I issue a monetary order in the amount of \$4800.00 to the** tenants including both the \$4700.00 overpayment of rent and the recovery of the \$100.00 filing fee.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

**I order that the landlord comply with the Act** with particular attention to sections 40, 41, 42, 43 and 70 of the Act in relation to this tenancy.

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: June 5, 2018

---

Residential Tenancy Branch