



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: DRI, FFT

### **Introduction**

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that the rent increase demanded by the landlord is a rent increase that is not permitted by the Residential Tenancy Act.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenants testified they attempted to serve the landlord with the Application for Dispute Resolution/Notice of Hearing by mailing, by registered mail to where the landlord resides on August 10, 2018 but it was not picked up by the landlords. The landlords testified that they were out of the country during that time period. In any event the tenants served the documents by e-mail. The landlords were present and ready to proceed. I determined there was sufficient service.

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that the rent increases demanded by the landlords are not permitted by the Residential Tenancy Act?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The tenancy began on October 1, 2014. The rent was initially set at \$1380 per month. The tenants paid a security deposit of \$700 at the start of the tenancy. There have been rent increases since then.

The tenants started paying rent of \$1490 commencing October 1, 2017 after they signed an Addendum agreeing to that amount. The tenants are not disputing the previous rent increases and are not seeking a monetary order for paying rent not permitted by the Act.

The landlords gave the Tenants a new Addendum which would provide for a rent increase of \$110 from \$1490 to \$1600 commencing October 1, 2018. The Tenants have not agreed to this sum and not signed that document. They submit the amount claimed exceeds what is permitted under the Residential Tenancy Act Regulations. The landlords have orally told the Tenants they intend to increase the rent by \$100 per year until they reach the amount needed to pay for their costs.

The landlords testified that both are retired and they have limited income. Their costs amount to \$1852 per month for the mortgage and strata fees. This does not include the property tax and annual insurance which increases their monthly cost to \$2023. If they are unable to receive a rent which would cover their costs they would have no alternative but to offer their principal home for rent and move into the rental unit.

Tenants' Application for an Order reimbursing her a rent increase not permitted by the Act:

Section 41 to 44 of the Residential Tenancy Act provides as follows:

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 payable for the rental unit;

(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.

#### Analysis

The Residential Tenancy Act provides that rent can be increased only accordance with the Act. The landlords can raise the rent in an amount calculated with the regulations. The tenants cannot dispute this provided the provisions of section 42 are followed. Alternatively the landlords can make an application to the Residential Tenancy Branch

for a rent increase greater than the amount calculated under the regulations. There are criteria set out in the Regulations but if approved by an arbitrator the landlords would then have the right to serve a Notice of Rent Increase in that increased amount. Finally, the landlord can serve a Notice of Rent Increase in an amount agreed to by the tenant in writing provided the requirements of section 42 have been met.

The rent increase proposed by the landlord to take effect on October 1, 2018 does not meet the requirements of the Act. It exceeds what is permitted by regulations. The landlords have not obtained an order permitting an increase greater than the amount calculated under the regulations and the tenants have not agreed to the proposed amount. Further, the landlords have not followed the requirements of section 42.

Conclusion:

I ordered that the proposed rent increase which was to take effect on October 1, 2018 is of no force and effect. Similarly the rent increases proposed by the landlord to take effect in 2019 and later require that the landlord follow the Act.

As the tenants have been successful with this application I ordered that the landlords pay to the tenants the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

**This decision is final and binding on the parties.**

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 27, 2018

---

Residential Tenancy Branch