



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MODEL A INN
and [tenant name suppressed to protect p

DECISION

Dispute Codes:

Landlord: OPR, OPN, OPU, MNRL, MNDCL, MNDL, FFL
Tenant: CNR, DRI, LRE, OLC, OT

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

The tenant filed their application on July 18, 2018 disputing a Notice to End Tenancy for unpaid rent, disputing an additional rent increase, control the landlord's right to enter, and for the landlord to comply with the Act.

The landlord filed an application July 24, 2018 for an Order of Possession and a Monetary Order

Both landlords and the tenant with their advocate attended the hearing and were given opportunity to present *relevant* evidence and make *relevant* submissions. The parties were given opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence they wished to present.

Preliminary matters

Both parties placed an abundance of items for resolution in their respective applications which the parties agreed no longer are relevant or which the parties are now abandoning. Both parties confirmed to me that the only items in dispute are as follows.

- The tenant solely seeks remedy / recovery of rent paid pursuant to the landlord's imposed *additional* rent increase.
- The landlord seeks unpaid rent for July 2018 in the amount of \$900.00.

Both parties provided sufficient evidence allowing me to accept their respective arguments that I have jurisdiction under the Residential Tenancy Act to determine the parties' dispute.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed for unpaid rent and recovery of their filing fee?

Is the tenant entitled to recover paid rent resulting from an imposed illegal rent increase?

Background and Evidence

The *relevant* evidence in this matter is as follows. The parties agree they entered into a verbal tenancy agreement in May 2016 for living accommodations (the rental unit) normally occupied for travel, temporary or vacation related accommodation. The parties originally agreed that a payable monthly rent of \$700.00 was to be paid in advance on a month to month basis, which they mutually extended for the following 26 months. The tenancy ended upon the tenant vacating on August 01, 2018 pursuant to their notice to vacate, which was accepted by the landlord. There is no security deposit in this matter.

It is undisputed that to the end of March 2018 the monthly payable rent remained at \$700.00. It is undisputed that at least several months earlier the landlord effectively simply informed the tenant they were increasing the rent to \$900.00 starting the month of April 2018. It is undisputed that the tenant satisfied the requested rent increase of \$200.00 to \$900.00 beginning the month of April 2018 and subsequently again paid \$900.00 the months of May and June 2018. The parties agree that no amount of rent was, or has been, satisfied for the month of July 2018.

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.

I find there is no evidence of an oral or a written *agreement* between the parties to an increase of the rent from \$700.00 to \$900.00 per month. I find that the Act states as follows.

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 (of a rent increase).

Section 43 - Amount of rent increase, in parts relating to this matter states;

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.

Section 43(1) of the Act states 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 4.0% allowable rate for 2018. 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 did not. In that context I find that the landlord did not comply with the Act and therefore the entire \$200.00 increase imposed by them is not allowed pursuant to Section 43(5).

Section 43(5) of the Act says that if a landlord collects a rent increase which does not comply with the Act requirements of Part 3 the tenant may deduct the increase from rent or otherwise recover the increase. I accept the tenant's application disputing the landlord's imposed additional increase as their means to recover the illegal increase paid for April, May, and June 2018 in the sum of \$600.00.

In respect to the landlord's claim for the unpaid rent for July 2018, **Section 26** of the Act is clear that payable rent must be paid, and moreover the parties do not dispute this fact. The tenant acknowledges they did not pay any rent for July 2018.

Therefore I find the landlord is entitled to unpaid rent for July 2018 in the amount of

\$700.00 as originally agreed by the parties and with no valid rent increase. However, this amount will be offset by the tenant's entitlement to recoverable paid rent as a result of the landlord's illegal rent increase for the months of April, May and June 2018.

As the landlord in part has been successful in their claim they are entitled to recover their filing fee.

Calculation for Monetary Order

Landlord - Unpaid rent for July 2018	\$700.00
Landlord - filing fee	\$100.00
<i>Tenant - recoverable paid rent for April - June 2018</i>	<i>-\$600.00</i>
Monetary Order - landlord	\$200.00

Conclusion

The party's respective applications in their parts relevant to this dispute are allowed.
The balance of claims by both parties are dismissed, without leave to reapply.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$200.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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 11, 2018

Residential Tenancy Branch