



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC DRI MNDCT FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order regarding a disputed rent increase 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 sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord attended in person and was assisted by his family member who attended by conference call. The tenant attended via telephone and was assisted by his spouse.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application and evidence. The tenant confirmed receipt of the landlord's materials. Based on the undisputed evidence I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties testified that the rental suite was damaged in a fire on November 11, 2018 and the property has been declared uninhabitable by the fire department. The tenant testified that he has vacated the rental unit and the parties agreed that the tenant will be given an opportunity to collect personal items from the

suite. The parties agreed that the tenancy is now frustrated as the rental unit is no longer inhabitable. Accordingly, the tenant withdrew the portion of the application seeking to cancel the 1 Month Notice.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord.

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in August, 2015. No written tenancy agreement was prepared. The monthly rent at the start of the tenancy was \$650.00 payable by the first of each month. No security deposit was paid. The monthly rent was increased to \$700.00 as of August, 2016 and increased again to \$750.00 from August, 2017. The tenant paid the full amount of rent for the duration of the tenancy.

The landlord issued a Notice of Rent Increase dated August 1, 2018 which provides that the rent will increase from \$750.00 to \$800.00 as of November 1, 2018. The tenant submits that the proposed rent increase is greater than that allowed under the Act and regulations. The tenant issued written correspondence to the landlord disputing the rent increase. The tenant also testified that each of the rent increases in 2016 and 2017 were also greater than the allowed amount. The tenant testified that he was forced to pay the full amount of rent and the rent increases were unilaterally imposed by the landlord.

The tenant paid the amount of \$465.74 on November 1, 2018. The tenant testified that the amount was calculated based on the allowable rent increase of 4.00% from \$750.00 to \$780.00 less the amount of \$314.26, which the tenant believes to be the amount of overpayment made during the 2017 year.

The tenant seeks a monetary award in the amount of \$289.20 for overpayment of rent made during the tenancy. The tenant testified that they are uncertain what the allowable rent increases were for the 2016 and 2017 years. The tenant was not able to articulate how they calculate the amount they are seeking.

The landlord testified that each of the rent increases throughout the tenancy were not imposed but mutually agreed to between the landlord and tenant. The landlord testified

that both parties were aware of the amount of rent increase allowed under the Act but they mutually agreed to the \$50.00 increase each year.

### Analysis

Pursuant to section 43 of the Act, a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations. For the 2018 year the maximum amount a landlord may increase a rent is 4.0%. Based on the original rent of \$750.00 the maximum allowable increase is to a monthly amount of \$780.00.

I find that the Notice of Rent Increase dated August 1, 2018 attempts to increase the rent by \$50.00 to \$800.00, greater than the allowable increase. Therefore, I find that the Notice of Rent Increase does not conform to the requirements of the Act and is of no force or effect. I find that the monthly rent remains at the amount of \$750.00 for November, 2018.

The parties gave evidence that the rental unit suffered a fire and was uninhabitable from November 11, 2018. I find that this tenancy ended on that date and the tenant was only obligated to pay the rent for the period of November up to the date when the tenancy was frustrated. Based on a monthly rent of \$750.00 I calculate the rent for the period in November, 2018 until the tenancy was frustrated to be \$266.13.

The parties testified that the tenant paid rent in the amount of \$465.74 on November 1, 2018. Accordingly, I find that there is an overpayment of \$199.61 for the period in November, 2018 until the tenancy was frustrated on November 11, 2018. I issue a monetary award in the tenant's favour in that amount.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The onus is on the applicant, the person bringing a claim, to show on a balance of probabilities the evidentiary basis for their claim. In the matter at hand the tenant must show that they incurred losses in the amount of \$289.20 due to the violation of the *Act*,

regulations or tenancy agreement by the landlord. The tenant submits that the amount claimed represents the overpayment of rent as the landlord imposed rent increases beyond what is acceptable under the *Act*.

I find there is insufficient evidence in support of the tenant's claim for a monetary award. I do not find the tenant's submission that the increases in rent throughout the tenancy were unilaterally imposed by the landlord and not the result of a mutual agreement to be supported in evidence. The only Notice of Rent Increase submitted into evidence is dated August 1, 2018. The tenant disputed that rent increase in writing and did not pay the amount sought by the landlord of \$800.00 on November 1, 2018.

If the earlier rent increases during the tenancy were similarly imposed unilaterally by the landlord it would be reasonable to expect that a Notice of Rent Increase would have been issued. If the tenant had disagreed with the amount of the previous rent increase it would be reasonable to expect that the tenant would have filed an application for dispute resolution regarding the earlier rent increases. The evidence submitted is that the tenant paid the full amount of rent requested by the landlord throughout this tenancy until November, 2018 when they did not pay the full amount demanded by the landlord. The tenant submitted into evidence a letter dated August 28, 2017 where the tenant informs the landlord of the maximum amount of rent increase possible under the *Act*. I find that the tenant's actions in paying the full amount of rent after raising the issue is indication that the parties had come to an agreement regarding the amount of rent payable. If the tenant was not in agreement with the rent increase, the tenant was aware of their rights under the *Act* and could have filed an application disputing the increase.

The tenant testified that they were forced to pay the rent but I find little evidence in support of this submission. The tenant gave evidence that they were aware that the *Act* sets out the maximum rent increase that a landlord may impose. The evidence submitted shows that the tenant was aware that they had the right to file an application for dispute resolution to dispute a rent increase above the maximum amount. The tenant did not do so until the current application.

Based on the sum of the evidence of the parties I find that the tenant has not shown that they suffered a loss due to the violation of the landlord. I find that there is insufficient evidence that the rent increases that occurred earlier in this tenancy were imposed by the landlord and not reached through an agreement between the parties. I find that the tenant has not shown on a balance of probabilities that the rent payments throughout

the tenancy are a loss incurred due to the landlord's violation. Consequently, I dismiss this portion of the tenant's application.

As the tenant's application was not wholly successful I issue an order allowing the tenant to recover a portion of their filing fee in the amount of \$50.00.

### Conclusion

I issue a monetary award in the tenant's favour in the amount of \$249.61 which represents the return of overpaid rent for November, 2018 until the tenancy was frustrated and the filing fees.

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.

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: November 19, 2018

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Residential Tenancy Branch