



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: DRI, MNDCT, OLC RR

### **Introduction**

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

- a. Reimbursement of rent increase paid that was not permitted by the Residential Tenancy Act.
- b. A monetary order in the sum of \$5100
- c. An order to reduce the rent
- d. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.

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.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on November 5, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for reimbursement of rent increase paid that was not permitted by the Act?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to a reduction of rent?
- d. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement?

### **Background and Evidence:**

The tenancy began approximately 5 years ago. The rent was \$1300 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$650 at the start of the tenancy. In late December 2017 the landlord increased the rent by \$300 per month to

\$1600 per month payable in advance on the first day of each month. The tenant has paid the additional \$300 per month for the last 12 months.

The tenant gave the following evidence:

- The tenancy began about 5 years ago. The rent was \$1300 per month.
- In December 2017 the landlord told the tenant he would have to increase the rent by \$300 per month to \$1600 per month.
- The tenant has paid the additional \$300 per month for the last 12 months.
- The landlord has sold the property with closing to complete in 2019.
- The landlord did not give the Tenant a Notice of Rent Increase in the approved form.
- The tenancy agreement is oral. The parties did not agree in writing to the rent increase.
- The tenant testified he trimmed trees in the front and back yard over the last 5 years and he is claiming \$1500 for this work.
- He testified a family member is an arborist and he told him this was a far price.
- The work took place over a number of years. The tenant failed to provide an accounting of the dates and time spent in completing this work.

The landlord gave the following evidence:

- He delayed giving the tenant a rent increase for 4 years.
- It was necessary to give a rent increases because his mortgage payments were increased as well as increases in other expenses.
- The landlord testified he never agreed to pay for the trimming of the trees.
- The landlord denies that amount of work alleged by the tenant.
- He testified that if he was required to complete the work he would have obtain the assistance of other family members and the work would have been completed in a short period of time.

Tenant 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. (my emphasis)**

(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

I determined the landlord failed to comply with section 41 to 44 of the Act and the tenant is entitled to a monetary order for the overpayment. The landlord failed to give the tenant a Notice of Rent Increase in the approved form. Further the landlord failed to give the tenant 3 months notice and the amount of the rent increase far exceeded what is permitted by the Act. I determined the Tenant has overpaid rent in the sum of \$300 per month starting January 1, 2018 to and including December 1, 2018 and the Tenant is entitled to recover the overpayment of \$3600. I ordered the rent remains at \$1300 per month payable in advance on the first day of each month until it is changed in accordance with the Residential Tenancy Act..

The tenant sought a monetary order in the sum of \$1500 for the cost of tree trimming over the last 5 years.

Policy Guideline #16 provides as follows:

### **C. COMPENSATION**

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I dismissed the claim for the cost of trimming trees the following reasons:

- The tenant failed to provide sufficient proof of the work that he allegedly did. He testified a family member is an arborist and they would have charged this sum. However, there is insufficient evidence from a third party to support this allegation.
- The tenant failed to keep sufficient records to prove the amount of work that he did he allegedly did.
- There was no agreement between the parties for the landlord to pay the tenant for tree trimming. If a landlord fails to do what they are obligated to do under a tenancy agreement the tenant must first obtain an order from an arbitrator unless it amounts to an emergency repair. The tenant is not entitled to do some work and then charge the landlord.

### Conclusion:

In summary I ordered the rent for the rental unit remain at \$1300 per month payable in advance on the first day of each month until such time it is changed in accordance with the Residential Tenancy Act.

I further ordered that the landlord pay to the tenant the sum of \$3600 for reimbursement of the overpayment of rent for the last 12 months.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**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: December 10, 2018

---

Residential Tenancy Branch