



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, ERP, LRE, OLC, RP, FFT

### Introduction

On December 19, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to dispute a rent increase pursuant to Section 41 of the *Residential Tenancy Act* (the “*Act*”), seeking an emergency repair pursuant to Section 62 of the *Act*, seeking to set conditions on the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking a repair order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with V.V. and A.M. attending as his advocates. The Landlord attended the hearing with R.L. acting as his agent. All parties provided a solemn affirmation.

The Tenant advised that they served the Notice of Hearing package and evidence by registered mail to the Landlord on December 21, 2018 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing package and the evidence.

The Landlord advised that he served his evidence to the Tenants on January 21, 2019 by hand and the Tenant confirmed that they will accept this late evidence. Based on the undisputed testimony, I am satisfied that service of all evidence complied with the Rules of Procedure and that the hearing could proceed accordingly. I have accepted and considered the submitted evidence of both parties when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, as per the Tenant's request, this hearing primarily addressed the Application with respect to the rent increase, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Was a rent increase implemented contrary to the *Act*?
- Are the Tenants entitled to compensation for overpayment of rent due to an illegal rent increase?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the Landlord purchased the rental unit, and a new tenancy agreement was subsequently signed with the Tenants on February 28, 2017 for a fixed length of time of one year, ending February 28, 2018. Rent was established at \$1,700.00 per month, due on the first of each month. A security deposit of \$747.50 and a pet damage deposit of \$747.50 were transferred from the previous tenancy agreement. A copy of the most current tenancy agreement was submitted into evidence. The Tenant advised that with this new tenancy agreement, the Landlord illegally increased rent from what they were paying under the old tenancy agreement with their previous landlord.

The Tenant also submitted a copy of the tenancy agreement that they had with the previous owner of the rental unit. This agreement was signed on January 17, 2016 to commence on February 1, 2016 for a fixed length of time of one year, ending on January 31, 2017. Rent for that tenancy agreement was established at \$1,495.00 per month, due on the first day of each month.

The Tenant submitted that the Landlord approached them on January 31, 2017, advised them that he was going to increase the rent to \$1,900.00 per month, and stated that he would evict them and have his daughter occupy the rental unit if they did not agree. They advised him that this was illegal and that the *Act* limited the maximum allowable rent increase each year, and the Landlord stated that he was not aware of the law. The Tenants advised the Landlord that they would agree to a rent increase to \$1,625.00 per month, but then the parties subsequently signed the most current tenancy agreement at \$1,700.00 per month.

They stated that on May 20, 2018, the Landlord texted them advising them that rent would be increased to \$1,768.00 per month and they advised him to comply with the *Act* with respect to timing of a rent increase. On May 22, 2018, they requested that the Landlord email them to notify them of this rent increase but were unaware that the proper form was required. On September 30, 2018, the Landlord asked if they had received the Notice of Rent Increase that was emailed to them and they requested that he email it again. They confirmed that they received the Notice of Rent Increase form on September 30, 2018 by email. The rent increase was effective on December 1, 2018.

The Tenant submits that the rent increase is invalid as it was not served in accordance with Section 88 of the *Act* and because the effective date of the notice does not comply with the *Act* as it is effective a month earlier than allowed. In addition, the Tenants sent multiple emails requesting that the Landlord reimburse them in the amount of \$4,100.00 because it is their belief that the Landlord illegally increased the rent from the original tenancy agreement that they signed with the previous owner of the rental unit.

The Tenant's counsel submitted that the most current tenancy agreement signed is invalid as the amount of rent that was stipulated amounts to contracting outside of the *Act* as the Landlord is required to provide the proper timing to increase the rent and use the appropriate form as well. Furthermore, he suggested that the Tenants only signed this new tenancy agreement under threat of being evicted. He advised that the correct rent should be \$1,495.00 and that future rent should be reduced in the amount

equivalent to the Tenants' overpayments of rent to date. He also referenced a previous decision of the Residential Tenancy Branch that he believes supports this argument.

In the alternative, counsel submits that the Landlord's Notice of Rent Increase from \$1,700.00 to \$1,768.00 is not valid as the Landlord has not served this form in accordance with Section 88 of the *Act*.

R.L. submitted that the most current tenancy agreement was signed by both parties and was signed in good faith by the Landlord. He stated that the Landlord did discuss the potential for his daughter to move into the rental unit and that he is within his right to end the tenancy with a Two Month Notice to End Tenancy for Landlord's Use of Property, but there was no threat issued. He advised that the Tenants provided conflicting testimony on this point as they initially submitted that they signed the new agreement because they were threatened, then they stated that they did not know why they agreed, and then they finally acknowledged agreeing to \$1,700.00 per month for security. He advised that the Landlord has difficulties with English and the Tenants were taking advantage of his good nature. He stated that the Notice of Rent Increase form sent by email should be effectively served as the Landlord complied with how the Tenants wanted to receive this form.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Furthermore, while counsel has cited a past decision of the Residential Tenancy Branch, I find it important to note that I am not bound or obligated to follow past decisions of the Residential Tenancy Branch.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if they comply with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenants' rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenants notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that

the Landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenants in writing.

When reviewing the Tenants' claims for compensation due to their allegations of an illegal rent increase, I find that the Tenants' claim of the rent increase from \$1,495.00 to \$1,700.00 is unfounded. The evidence before me is that the Tenants had a tenancy agreement in place with the previous owner of \$1,495.00 per month, and subsequent to when the rental unit was sold to the Landlord, the parties signed a brand-new tenancy agreement at \$1,700.00 per month. Signing this brand-new tenancy agreement was not necessary as the Landlord simply assumed the existing tenancy agreement that was in effect prior to his ownership of the rental unit. Signing a new agreement constitutes a brand-new agreement with new terms. As such, I am satisfied that this new agreement is not subject to the rent increase requirements of the *Act*, and I dismiss the Tenants' claims for a rent reduction due to unsubstantiated overpayments of rent.

With respect to the Tenants' next claim, the undisputed evidence before me is that the Tenants advised the Landlord that they could be served the Notice of Rent Increase form by email and that the Landlord emailed this document on September 30, 2018. While email is not a method of serving a document as per Section 88 of the *Act*, Section 71(2)(c) of the *Act* allows the director to accept service of a document even if it does not comply with Section 88. As this is the manner in which the Tenants requested this document, and as the Tenants acknowledged they received this Notice of Rent Increase form, I am satisfied that they have been sufficiently served a rent increase on September 30, 2018.

However, I find it important to note that Section 42(4) states that if the Notice of Rent Increase "does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply." As the Landlord is required to give the Tenants three, whole month's notice, the effective date on this Notice of Rent Increase form is incorrect. As such, I find that the correct effective date of the rent increase will automatically self-correct to January 1, 2019.

Furthermore, the maximum allowable rent increase for 2019 is 2.5%. Consequently, based on the Tenants' rent being \$1,700.00 per month, I find that the maximum amount of rent due on January 1, 2019 is **\$1,742.50**.

As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application and can withhold this amount from a future month's rent.

### Conclusion

Based on the evidence before me, I find that the rent due as of January 1, 2019 and going forward until the next appropriate rent increase will be established at **\$1,742.50** per month.

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: February 6, 2019

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Residential Tenancy Branch