



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to dispute a rent increase from the Landlord pursuant to sections 42 and 43 of the *Act*. The Tenants also asked for an order that the Landlord provide a copy of the tenancy agreement to them.

The Tenants D.J., A.G., M.M., and J.B. appeared at the teleconference hearing and gave affirmed testimony. The Landlord did not attend the hearing.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants were given the opportunity to provide their evidence orally. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

The Tenants said that the hearing was initially scheduled for March 12, 2019, but they said the information on the Notice of Hearing that went to the Landlord gave the date of February 12, 2019. The Tenants said they initially served the Landlord with their documentary evidence at the end of January 2019. They said they again served the Landlord with the corrected hearing information and their documentary evidence on February 26, 2019. The Tenants agreed that they served the Landlord with their Application for dispute resolution by taping an envelope with the Application and documentary evidence to the Landlord's door on February 26, 2019.

Based on the evidence before me and on a balance of probabilities, I find that the Landlord was properly served with the Application and documentary evidence.

The Tenants provided an email address for this matter at the outset of the hearing and

confirmed their understanding that the decision would be emailed the Tenants at this address and mailed to the Landlord at the address on the Application.

### Issue(s) to be Decided

- Was the rent increase imposed by the Landlord permissible under Part 3 of the *Act*?
- If not, are the Tenants entitled to compensation in this regard, and if so, in what amount?
- Are the Tenants entitled to a copy of the tenancy agreement pursuant to section 13 (3) of the *Act*?

### Background and Evidence

#### *Rent Increases*

The Tenants share a single-family house and divide the rent between them. The Tenant, A.G., said she has lived at the rental unit from May 2016 until the present. She said there was no tenancy agreement prior to June 2018. A.G. said that the rent prior to June 2018 was \$1,650.00. She said that in May 2018, the Landlord had the Tenants sign a tenancy agreement and told them that the rent was going up to \$2,000.00 per month in June 2018. The Tenants said they disputed this rent increase and that the Landlord settled on a rent of \$1,900.00 per month.

The Tenants agreed that in December 2018, the Landlord wanted them to sign another tenancy agreement and to raise the rent to \$2,000.00. The Tenants said they did not agree to this increase, because it did not comply with the *Act* and Residential Tenancy Regulation (the “Regulation”).

The Tenants uploaded a receipt from the Landlord for May 2018, showing that the rent they paid that month was \$1,650.00. They provided receipts for June 2018 through January 2019, showing that they had paid \$1,900.00 in rent to the Landlord for each of these months.

#### *Tenancy Agreement*

The Tenants said that the Landlord would not give them a copy of the rental agreement that they had signed, despite their repeated request to have their own copy.

## Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

### Rent Increase

Policy Guideline 37 ("PG #37") addresses rent increases permitted under the *Act*. PG #37 states that a tenant's rent cannot be increased unless a tenant has been given proper notice in the approved form (RTB form #7), at least three months before the increase is to take effect. A tenant's rent can only be increased once every 12 months. This is consistent with Part 3 of the *Act*, including section 43 (1), which states that 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.

PG #37 also says:

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

As set out in section 6 of the Schedule to the Regulation:

- (3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.
- (4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

Section 22 of the Regulation states:

### **Annual rent increase**

- 22** (1) In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a

rent increase takes effect.

(2) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or before December 31, 2018, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate + 2%.

(3) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate

The allowable rent increase for 2018 was 4.0%; the allowable rent increase for 2019 is 2.5%.

The Landlord was allowed to increase the rent in June 2018 by 4% of \$1,650.00 or \$66.00 per month to \$1,716.00. Accordingly, when the Landlord increased the rent to \$1,900.00, he overcharged the Tenants by \$184.00 a month from June 2018 to the present.

Based on the evidence before me, I find that the Tenant, A.G., had not had a rent increase since she moved into the rental unit in June 2016. As a result, it was reasonable for the Landlord to impose a rent increase starting in June 2018; however, he did not give the tenants three months' written notice in the approved form and he increased the rent beyond what is allowed by the Regulation. As a result, I find that the rent increase in this situation was invalid and I cancel it.

Section 43(5) of the *Act* states:

**43 (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.

According to section 42 (2) of the Act, the Landlord was required to give the Tenants three months' notice of the rent increase. Rather than starting the rent increase in June 2018, the Landlord was required to give the Tenants notice that the rent increase would

happen on September 1, 2018. Accordingly, the Tenants paid \$250.00 too much in June through August 2018 or a total of \$750.00 too much in rent for those months.

PG #37 states:

If a landlord collects an unlawful rent increase, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected. In those circumstances, the landlord may issue a new three month Notice of Rent Increase, as the original notice did not result in an increased rent.

Based on the above, I find that the Landlord's rent increase to the Tenants was contrary to the *Act*, Regulation and Policy Guidelines; accordingly, there was no rent increase, so the Landlord overcharged the Tenants by \$1,900.00 - \$1,650.00 = \$250.00 per month. This illegal rent increase went from June 2018 to April 2019 or eleven months, so the Landlord overcharged the Tenants by \$2,750.00.

I award the Tenants a monetary order of **\$2,750.00** that they may realize by reducing the rent they pay to the Landlord, until this amount is repaid in full.

Further, I order that the Tenants' rent is \$1,650.00 per month from this date forward, until it is increased in accordance with the *Act*, Regulation and Policy Guideline.

### *Tenancy Agreement*

Section 13 (3) of the *Act* states: "Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement." As a result, I order the Landlord to provide the Tenants with a legible, complete copy of the tenancy agreement, including any addendums, by April 15, 2019.

As the Tenants were successful in their Application, I award them recovery of the \$100.00 filing fee in this matter, which they may deduct from one future rent payment.

### *Conclusion*

The Landlord breached the *Act* by imposing an illegal rent increase. I award the Tenants with a monetary order pursuant to section 67 of the *Act*, in the amount of \$2,850.00, which includes recovery of the filing fee, all of which I authorize them to deduct from future rent payments until the claim is completely satisfied.

I order that the rent for this rental unit be \$1,650.00 per month, until increased in compliance with the *Act*, Regulation and Policy Guidelines.

I order that the Landlord give the Tenants a complete, legible copy of the tenancy agreement by **April 15, 2019**.

This decision is final and binding on the Parties, unless otherwise provided under the *Act*, and 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: April 5, 2019

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Residential Tenancy Branch