



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 2, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to dispute a rent increase; and
- an order granting recovery of the filing fee.

The Tenants as well as the Landlord and the Landlord's Agent, J.L., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenants testified that they served their Application and documentary evidence package to the Landlord in person on June 8, 2019. The Landlord confirmed receipt. The Landlord testified that he served the Tenants with his documentary evidence in person on June 30, 2019. The Tenants confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Tenants entitled to compensation relating to the Landlord's rent increase, pursuant to Section 42, 43, and 67 of the *Act*?
2. Are the Tenants entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2016 with a verbal agreement that the Tenants would pay rent in the amount of \$1,100.00 per month. The Tenants did not pay a security deposit. The tenancy ended on June 30, 2019.

The Tenants testified that they began their tenancy based on a verbal agreement that the Tenants were required to pay rent in the amount of \$1,100.00 per month to the Landlord. The Tenants stated that on April 1, 2017, the Tenants were approached by the Landlord's son, who indicated that rent would go up to \$1,300.00 per month. The Tenants stated that they began to pay \$1,300.00 to the Landlord even though they felt that the Landlord was not acting fairly. The Tenants stated that the parties had a discussion about the rent increase, during which the Landlord indicated that the Tenants could move out of the rental unit if they weren't happy with the rent increase.

The Tenants stated that the parties entered into a written tenancy agreement on July 22, 2017, agreeing to pay rent in the amount of \$1,300.00 to the Landlord which was due on the first day of each month. The Landlord submitted a copy of the tenancy agreement in support. The Tenants stated that they signed the agreement under duress as they were not able to move out of the rental unit due to health reasons and low vacancy rates in the region.

The Tenants stated that in October of 2018, the Landlord sent them a text message indicating that the rent will be increased to \$1,400.00 effective on January 1, 2019. The Tenants stated that they did not agree to this rent increase; however, paid the \$1,400.00 in rent to the Landlord from January to June 2019 regardless, to ensure that they were able to remain in the rental unit.

The Tenants are also claiming that they paid for the water bills in cash to the Landlord each month, however, feel as though water was included in their rent. The Tenants are

seeking the return of all the money paid to the Landlord in relation to the previous water bills throughout their tenancy.

In response, the Landlord indicated that they had a verbal agreement with a previous occupant that the rent would be in the amount of \$1,100.00 per month. The Landlord stated that the occupant moved out of the rental unit, at which point the Landlord wished to increase the rent for the remaining Tenants. The Landlord stated that the parties met and agreed to the increase of rent to \$1,300.00 a month. The Landlord stated that the parties all signed a tenancy agreement in support of this change. The Landlord stated that there were no threats or coercion made towards the Tenants.

The Landlord confirmed that he sent the Tenant a text message in October 2018 requesting the rent be increased to \$1,400.00 effective January 2019. The Landlord confirmed that the Tenants have been paying rent in the amount of \$1,400.00 from January to June 2019. The Landlord stated that he provided the Tenant with sufficient notice of the rent increase and that the Tenants agreed to the increase in their response to the text message.

Lastly, the Landlord testified that water was not included in the Tenants' rent, as indicated on the tenancy agreement. The Landlord stated that the Tenants never objected to reimbursing the Landlord for the water bill and that the bill was always paid in cash by the Tenants.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

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.**

(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.

Section 43 of the *Act* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, **or agreed to by the tenant in writing.**

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

**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.**

In this case, the parties agreed that the Tenants entered into a verbal agreement with the Landlord that the rent owed to the Landlord each month was \$1,100.00.

I accept that the parties entered into a new written tenancy agreement on July 22, 2017 in which the Tenants agreed to an increase of rent in the amount of \$1,300.00 which

was due to the Landlord each month. I find that the Tenants agreed to the increase of rent in writing, therefore are obligated to pay rent to the Landlord in the amount of \$1,300.00.

The Tenants claimed that they signed the tenancy agreement under duress. I find that the Tenants could have made an application for dispute resolution at the time of rent increase, seeking remedies under the *Act*. Instead, I find that both Tenants signed the new tenancy agreement, confirming their understanding of the rent increase.

The Tenants stated that in October of 2018, they received a text message from the Landlord stating that the rent would increase to \$1,400.00. The Landlord stated that the Tenants agreed to the increase of rent in the text message. I accept that the parties agreed that the Tenants paid rent in the amount of \$1,400.00 to the Landlord from January 2019 to June 2019.

I find that the text message from the Landlord to the Tenants containing the information relating to the rent increase was not in an approved form, pursuant to Section 42 of the *Act*. I further find that the Tenants response in the text message does not meet the requirements of the Tenants agreeing to the rent increase in writing. As such, I find that the Landlord was not permitted to increase the rent to \$1,400.00. I find that the Tenants have overpaid their rent by \$100.00 each month from January to June 2019.

In light of the above, I find that the Tenants are entitled to the recovery of \$600.00 in relation to the over payment of rent ( $\$100.00 \times 6 \text{ months} = \$600.00$ ).

In relation to the payment of the water bill, I find that the water was not indicated as being included in the tenancy agreement signed by both parties; therefore, I find that the Tenants were responsible for paying the water bill during their tenancy. As such, I dismiss their claim without leave to reapply.

As the Tenants were partially successful in their Application, I find that they are entitled to the recovery of the \$100.00 filing fee to make their Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$700.00.

### Conclusion

The Landlord breached the Act by increasing the rent in a manner that was not in the approved form. As such, the Tenants are granted a monetary order in the amount of \$700.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: July 22, 2019

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Residential Tenancy Branch