



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **AMENDED DECISION**

Dispute Codes: CNL, DRI, MNDCT

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated July 8, 2019 and setting the end of tenancy for August 31, 2019.
- b. An order disputing reimbursing a rent increase that fails to comply with the Act and Regulations
- c. A monetary order in the sum of \$2200.

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 2 month Notice to End Tenancy was personally served on the Tenant on July 9, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on July 18, 2019. 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 cancelling the two month Notice to End Tenancy dated July 8, 2019?
- b. Whether the tenant is entitled an order reimbursing a rent increase that fails to comply with the Act and Regulations?
- c. Whether the tenant is entitled to a monetary order and if so how much?

### **Background and Evidence:**

The tenancy began on July 1, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$1700 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$850 and a pet damage deposit of \$850 at the start of the tenancy.

The tenant started to pay rent of \$1800 commencing January 1, 2018.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Application for an Order Cancelling the 2 month Notice to End Tenancy dated July 8, 2019:

The landlord testified that he wishes to have his daughter and her family move into the rental unit. The daughter also provided oral evidence at the hearing as well as an affidavit. The evidence indicates that she and her husband have entered into a lease for the rental of her house on Vancouver Island. The tenants took possession on September 1, 2019. The landlord's daughter testified that they are presently staying on a temporary basis with family.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. I am satisfied the landlord has a good faith intention to have a family member move into the rental unit and that family member intends to stay there longer than 6 months.

However, the Notice to End Tenancy fails to give the tenant the required to clear months to vacate the rental unit as required by the Act. The Act self-corrects an improperly dated Notice. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the correct date set out in being September 30, 2019.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective September 30, 2019. .

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Tenant Application for an Order reimbursing a rent increase not permitted by the Act:

The tenancy agreement that was entered into on July 1, 2016 provided that the rent was \$1700 per month. In late 2017 the landlord indicated that he thought a rent increase was appropriate. The tenant began paying rent of \$1800 commencing January 1, 2018.

The landlord submits the parties orally agreed to this increase of \$100 to take effect when the landlord removed his car from the car port. The landlord referred to a letter written by the tenant to the landlord which is undated where the tenant states the parties had agreed to the rent increase to \$1800 once the landlord removed his car.

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.

(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

Analysis:

I determined the landlord failed to comply with the section 41 to 43 of Residential Tenancy Act and as a result tenant is entitled to reimbursement of the rent increase. An oral agreement for an increase in rent is not enforceable.

Section 43 permits a landlord to impose a rent increase as calculated in accordance with the regulations or "agreed to by the tenant in writing". Even one considers the undated letter signed by the tenant as evidence of an agreement in writing this does not relieve the landlord of the obligations under section 42. The landlord is still required to serve a Notice of Rent Increase in the approved form and follow the time requirements of the section.

As a result I determined the tenant is entitled to \$2000 being the \$100 increase paid by the Tenant from January 1, 2018 to and including August 1, 2019 (20 months).

The letter also indicates the tenant intended to with hold \$400 from the May 1, 2018 rent. The tenant testified the landlord objected and she did not withhold that amount. She paid the landlord \$1800 for the rent for May 2018.

The tenant further claimed \$300 being the deductible she had to pay on her automobile insurance when the car port fell on her car and damaged it. The landlord did not dispute this claim. I determined the tenant is entitled to the \$300 claim.

As a result I determined that the landlord pay to the Tenant the sum of \$2300.

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.

Conclusion:

I dismissed the Tenant's claim to cancel the 2 month Notice to End Tenancy and issued an Order of Possession effective September 30, 2019. I ordered that landlord to pay to the Tenant the sum of \$2300.

**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: September 16, 2019

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Residential Tenancy Branch

This decision is amended pursuant to section 78 of  
The Residential Tenancy Act this 30<sup>th</sup> day of  
September 2019.