



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDCT, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on August 02, 2019 the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch on July 25, 2019 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

In November of 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, in person, on November 08, 2019. The male Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, however it is only referenced in this written decision if it is directly relevant to my decision. I specifically note that the majority of the evidence submitted by the Landlord is unrelated to the issue of a rent increase. Any evidence not related to the issue in dispute has not been considered.

Issue(s) to be Decided:

Are the Tenants entitled to a rent refund?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy ended on June 01, 2012;
- when the tenancy began the rent was \$1,700.00 per month;
- rent was increased to \$1,767.00, effective November 01, 2017;
- rent was due by the first day of each month;
- the Tenants vacated the rental unit on June 30, 2019; and
- the Tenants were not required to pay rent for June of 2019, as they had been served with a Two Month Notice to End Tenancy for Landlord's Use.

The male Tenant stated that the Tenants are not disputing the rent increase that was effective on November 01, 2017. He stated that they are only disputing the rent increase that became effective on December 01, 2017, at which time they began paying rent of \$2,000.00.

The male Tenant stated that he had a conversation with the Landlord in November of 2017, at which time the Landlord told him that she was planning on selling the rental unit. He stated that they mutually agreed that the Tenants would begin paying rent of \$2,000.00, effective December 01, 2017, and that the Landlord would not proceed with her plans to sell the rental unit. He stated that this was a verbal agreement; the rent increase was never agreed to in writing; and the Landlord never gave them written notice of the rent increase.

The Landlord stated that she told the male Tenant she was selling the rental unit and he offered to pay rent of \$2,000.00 because he did not want to move. She stated that she never asked for rent of \$2,000.00 and she never gave the Tenants notice that she was increasing the rent to \$2,000.00. She stated that she agreed not to sell the house after the male Tenant informed her that they would pay rent of \$2,000.00. She stated that this was a verbal agreement and the rent increase was never agreed to in writing.

The Landlord and the Tenant agree that the Tenants paid monthly rent of \$2,000.00 between December 01, 2017 and May 01, 2019, with the following exceptions:

- February of 2018 - \$1,838.00 paid, as \$162.00 was deducted for hydro and water;

- May of 2018 - \$1,951.00 paid, as \$49.00 was deducted for hydro;
- June of 2018 - \$1,950.00 paid, as \$50.00 was deducted for watering;
- July of 2018 - \$1,950.00 paid, as \$50.00 was deducted for watering; and
- August of 2018 - \$1,950.00 paid, as \$50.00 was deducted for watering.

The Landlord and the Tenant agree that the Landlord authorized the Tenants to deduct the aforementioned amounts from their rent.

Both parties submitted records of e-transfers that corroborates the aforementioned rent payments, although it appears the Tenants did not submit a record of payment for September of 2018 or February of 2019.

Analysis:

On the basis of the undisputed evidence, I find that rent the rent for this tenancy was increased from \$1,700.00 to \$1,767.00, effective November 01, 2017. As the Tenants are not disputing this rent increase, I have not considered the details of the rent increase.

Section 41 of the *Residential Tenancy Act (Act)* stipulates that a landlord must not increase rent except in accordance with this Part.

Section 42(1) of the *Act* stipulates that a landlord must not impose a rent increase for at least 12 months after the effective date of the last rent increase. As the rent was increased to \$1,767.00, effective November 01, 2017, I find that the Landlord did not have a right to impose another rent increase until November 01, 2018.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. Even if the Landlord had the right to increase the rent on December 01, 2017 and even if the Landlord gave proper notice of a rent increase, the rent could not have been increased to \$2,000.00 on December 01, 2017, pursuant to section 43(1)(a) of the *Act*, because that amount greatly exceeds the allowable rent increase of 2017.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount order by the director upon application under section 43(3) of the *Act*. As there is no evidence that the Landlord applied for a rent increase, pursuant to section 43(3) of the *Act*, I find that the rent was not increased to \$2,000.00 on December 01, 2017, pursuant to section 43(1)(b) of the *Act*.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing. Even if the Tenant offered to pay rent of \$2,000.00, the offer was not agreed to in writing. I therefore find that the rent was not increased to \$2,000.00 on December 01, 2017, pursuant to section 43(1)(c) of the *Act*.

As the rent was not increased to \$2,000.00 on December 01, 2017 in accordance with the *Act*, I find that the Landlord did not have the right to collect rent of \$2,000.00.

As there is no evidence that the Landlord lawfully increased the rent from \$1,767.00, I find that the Landlord did not have the right to collect rent in excess of \$1,767.00.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase. Although the Landlord submits that she did not request or impose the increase, accepting increased rent in exchange for agreeing not to sell the rental unit has, in my opinion, the same effect as a rent increase.

Even if the Landlord did not impose a rent increase, the fact remains that the Tenants overpaid the rent they were required to pay and I therefore find that the Tenants have the right to recover rent that was paid in excess of \$1,767.00 after December 01, 2017.

On the basis of my conclusion that the Tenants were only obligated to pay monthly rent of \$1,767.00 for the 18 months between December 01, 2017 and May 30, 2019, I find that the Tenants were obligated to pay rent of \$31,806.00 for this period. On the basis of the undisputed testimony, I find that the Tenants had the right to deduct \$361.00 from these rent payments. I therefore find that the Tenants should have paid \$31,445.00 in rent for this period.

On the basis of the undisputed evidence I find that the Tenants paid \$35,639.00 in rent for the 18 months between December 01, 2017 and May 30, 2019, (18 X \$2,000.00 less \$361.00)

I find that the Tenants have overpaid their rent for the 18 months between December 01, 2017 and May 30, 2019 by \$4,194.00 (\$35,639.00 – \$31,445.00). I therefore find that the Tenants are entitled to recover the overpayment of \$4,194.00.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of \$4,294.00, which includes a rent refund of \$4,194.00 plus \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 19, 2019

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Residential Tenancy Branch