



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a determination regarding their dispute of a rent increase by the landlord pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a determination regarding their dispute of a rent increase by the landlord?

Is the tenant entitled to an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

### Background and Evidence

The tenant gave the following testimony. The tenant testified that she moved into the unit on April 1, 2016 and the tenancy is ongoing. The tenant testified that the rent payable during her first year was \$1100.00 per month. The tenant testified that she and

the landlord had a “verbal agreement” that the rent payable in 2017 was reduced to \$1050.00 per month. The tenant testified the amount was reduced because the landlord wanted to keep her as a tenant.

The tenant testified that she and the landlord had a “verbal agreement” that the rent payable in 2018 was increased to \$1300.00 per month. The tenant testified that she and the landlord had a “verbal agreement” that the rent payable in 2019 was increased to \$1400.00 per month and is still at that rate. The tenant testified that the landlord increased the rent beyond the regulations and did so without issuing the required rent increase form as required.

The tenant testified that the landlord’s agent provided falsified documents and gave fraudulent testimony. The tenant testified that the agent has committed fraud on behalf of the landlord. Although the tenant did not “check off” the section for a monetary order as part of her application she testified that she is seeking the return of “overpayment” of rent in the amount of \$5022.30 as well as the \$100.00 filing fee. The tenant also wants the landlord to comply with the Act, regulation or tenancy agreement.

The landlord’s agent gave the following testimony. SB testified that the tenant agreed to the rent increases in writing and by text messages, but in any event, did so verbally. SB testified that the landlord issued the required notices and posted them to the tenant’s door. SB testified that the tenant should not be entitled to any amount.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants claim, and my findings are set out below.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlords agent to be a more credible witness than the tenant. The agent provided consistent, logical testimony which was supported with documentary evidence where available. The agent admitted when she could not recall

specific facts and, where appropriate, referred to her notes and documents prepared prior to this hearing to assist her recollection.

The tenant was argumentative, focused on irrelevant matters and conducted herself in an agitated and irrational manner. I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and making herself appear to be the wronged party. When given the opportunity to cross-examine the landlord's agent, the tenant chose to ask irrelevant questions rather than any substantive matter. Towards the conclusion of the hearing the tenant continually interrupted the landlord's testimony, stating she was committing fraud and that evidence had been manufactured. Based on the foregoing, where the evidence of the parties clashed, I found that the landlord's agent version to be more credible and consistent with how a reasonable person would behave.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

**In the tenant's own testimony**, she acknowledged and confirmed that **she verbally agreed** to the rent increases without dispute. The tenant failed to provide sufficient evidence that she disputed the amounts or her displeasure to the landlord and failed to provide sufficient evidence that she made reasonable attempts to mitigate it. The tenant was silent as to why after almost four years she decided to dispute the agreed rent increases. Based on the above, and on a balance of probabilities, I hereby dismiss the tenant's claim to dispute the rent increases as I find that she knowingly, and willingly agreed to the amounts. In addition, the tenant has not provided sufficient evidence to be granted an order to have the landlord comply with the *Act*, regulation or tenancy agreement, accordingly; I dismiss that portion of her application. As the tenant has not been successful in their application she is not entitled to the recovery of the filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: December 12, 2019

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Residential Tenancy Branch