



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, MNDCT, DRI**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to dispute a rental increase pursuant to section 41;
- An order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

The tenants attended with their advocate JA ("the tenants"). The landlord KG attended with his daughter and agent KG as well as the lawyer MD ("the landlords").

The landlords acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenants served the landlords as required under the *Act*.

The landlords filed no evidence.

Preliminary Issue

The tenants requested an amendment to their claim to add overpayments of rent for the months of January and February 2020.

The application, submitted in December 2019, pre-date these payments and as such the claim does not reflect them. I find the landlords could reasonably expect the tenants would amend their claim as requested and granting the request does not prejudice the landlords.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the application to include a claim for reimbursement of overpayment of rent for January and February 2020.

Issue(s) to be Decided

Are the tenants entitled to the following:

- An order to dispute a rental increase pursuant to section 41;
- An order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

Background and Evidence

The parties entered into a tenancy agreement for a basement unit in the landlords' building commencing March 1, 2013. The landlords live upstairs. Rent was \$700.00 monthly payable on the first of the month. The tenants paid a security deposit of \$350.00 which the landlords hold. A tenancy agreement was signed which was not in the approved RTB form, and the tenants testified they did not have a copy.

The rent was increased three times from October 1, 2017 to November 1, 2019. The tenants claim the increases were in violation of the *Act* and should be set aside. They request an order that the amount of rent be established as \$700.00 throughout the tenancy as the landlords did not comply with the *Act* in increasing the rent. The tenants ask that the amount paid over this monthly rent be returned to them.

On July 9, 2017, the parties signed a second tenancy agreement with an effective date of October 1, 2017. The agreement increased the rent from \$700.00 to \$726.00. No

Notice of Rent Increase was served. The agreement, submitted as evidence, was not in the RTB form. The tenants claimed they had no choice but to consent to the increase. The landlords claimed the increase was negotiated by the parties and the tenants were not coerced or forced in any way to agree to the increase.

The second increase took place in the fall of 2018. In a letter dated July 24, 2018, a copy of which the tenants submitted as evidence, the landlords informed the tenants that because of an increase in costs, "we have decided that your rent will be increased from 726.00 per month to 1100 per month" effective October 1, 2018."

The tenants testified they informed the landlords that could not afford the rent increase. The landlords suggested they would accept \$950.00. The tenants testified that they informed the landlords this increase would be difficult for them to afford. The tenants testified they believed they were powerless to oppose the increase and the parties signed a third agreement raising the rent from \$726.00 to \$950.00 effective October 1, 2018. A copy of the agreement, not in the RTB form, was submitted as evidence. No Notice of Rent Increase was served.

While the tenants testified that they believed they had no choice but to agree to the rent increase, the landlords claimed the amount was freely agreed to after fair negotiation.

On May 1, 2019, the landlords informed the tenants the rent would be increasing again, a third time.

Up until this time, the tenants testified that they were not knowledgeable about tenancy law. English is their second language. However, for the first time, they went to the RTB and asked about allowable rent increases. They testified they were provided with a printout of allowable increases which they gave to the landlords along with a blank Notice of Rent Increase form. They testified that they learned at this time that the previous increases were more than the maximum allowable amount.

On July 1, 2019, the landlords informed the tenants rent was increasing to \$1,150.00. The tenants testified they informed the landlords they could not afford the increase. The tenants stated the landlords threatened to evict them if they did not pay. The landlords denied making any such threats.

On July 10, 2019, the tenants' advocate informed the landlords by letter that the proposed increase was in excess of the amount allowed under the Act.

On July 26, 2019, the landlords provided the tenants with a Notice of Rent Increase in the RTB form increasing the rent from \$950.00 to \$973.00 on November 1, 2019, a copy of which was submitted by the tenants.

On October 25, 2019, the tenants were served by the landlords with a Two Month Notice to End Tenancy for landlords' use. The tenants filed an application to dispute the notice which was heard, and a decision made on January 10, 2020 in the file numbers referenced on the first page.

In the decision, the arbitrator dismissed the Notice and found it was not issued in good faith, stating "It is more likely than not that the Landlord is trying to avoid obligations under the Act and tenancy agreement regarding rent increases and they have an ulterior motive to end the tenancy so that they can re-rent the unit after six months for a higher monthly amount."

The parties agreed the rent increases of October 2017 and October 2018 were in excess of the maximum allowable rent increase and that no Notice of Rent Increase in the approved form was served.

In their written submissions, the tenants stated, in part (as written):

To date, the landlord's have intimidated and coerced the [tenants'] (who are both retired and on fixed incomes) to either pay an illegal rent increase or be evicted. This type of harassment and intimidation is considered unconscionable, because it is oppressive and grossly unfair to the tenants. It is also an abuse of the landlord's power over them for the purpose of financial gain. The landlords took advantage of the tenants need for housing so they could execute 3 separate tenancy agreement in an effort to illegally increase the rent and contract outside of the Act.

The landlords denied making such eviction threats and stated that all rent increases were freely agreed upon by the tenants.

The tenants clarified their request for a monetary order for reimbursement of overpayment of rent as follows:

ITEM	AMOUNT	
October 1, 2017 to September 30, 2018	\$426.00 x 12 months	\$312.00
October 1, 2018 – October 31, 2019	\$250.00 x 13 months	\$3,250.00
November 1, 2019 to December 31, 2019	\$273.75 x 2 months	\$547.50
January and February 2020	\$273.75 x 2 months	\$547.50
TOTAL CLAIM		\$4,657.00

The tenants requested an order that rent be set at \$700.00 and the previous rent increases set aside.

The landlords requested that the tenants' claims be dismissed.

Analysis

The hearing was 91 minutes and included considerable contradictory testimony. While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The Act addresses the requirements and conditions for rent increases in sections 42 and 43. The portions of these sections relevant to the tenants' application state:

Timing and notice of rent increases

42(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.

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.

[...]

(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.

Rent increases on October 1, 2017 and October 1, 2018

As agreed by the parties, I find the rent increases on October 1, 2017 and October 1, 2018 were greater than the allowable rent increases.

I find that the landlords did not provide the tenants with written notice of the rent increases three months prior to the rent increase taking effect, or at all. I find that the landlords proposed the rent increase to the tenants. I find the tenants accepted the rent increases believing they had no choice but to agree or they would be evicted.

I find that the parties did not record this agreement in writing as required by the Act.

Policy Guideline 37 contemplates sections 42 and 43, It, in part, states:

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 given with 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.

The approved form of notice of rent increase (Form RTB-7) provides significant information to the tenants regarding their rights under the Act. This information includes:

- A landlord must give a tenant at least 3 whole month's notice, in writing, of a rent increase. For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1st, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1st. The landlord must use this form, Notice of Rent Increase, and must serve according to the Residential Tenancy Act.

- It is an offence for a landlord or a landlord's agent to collect a rent increase in any other way other than in accordance with Part 3 of the Residential Tenancy Act. [...]
- A tenant may not apply for dispute resolution to dispute a rent increase that complies with Part 3 of the RTA.
- A landlord may only impose a rent increase up to the amount calculated in accordance with the regulations or as ordered by an arbitrator. If a tenant believes that the rent increase is more than allowed by the regulations, the tenant may contact the Residential Tenancy Branch for assistance
- For further information on rent increases, see Part 3 of the Residential Tenancy Act and Part 4 of the Residential Tenancy Regulation. You may also call the recorded 24-hour information line or visit the B.C. Government Web site to find out how to contact a Residential Tenancy Branch or to get more information (this information is at the bottom of page 1)

By requiring that the Notice of Rent Increase form be delivered to tenants, the tenants are provided with the above-stated information at the same time they are provided with notice of the rent increase. This information is designed to inform tenants of their rights under the Act and provide them with the information necessary to dispute the rent increase.

In this case, I find that the tenants did not have this information at the time they were made aware of the landlords' intention to raise the rent. As such, I find they were disadvantaged when they agreed to the rent increase. I find the tenants did not know their rights under the Act.

As I have found that the landlords failed to deliver written notice of the proposed rent increases in the approved form, I conclude the rent increases to be invalid. I therefore set aside the two rent increases on October 1, 2017 and October 1, 2018.

Rent increase November 2019

With respect to the third rent increase, I find the Notice of Rent Increase served July 26, 2019 was deficient in that the rent increase was calculated on an incorrect amount. I therefore set aside the Notice.

Compensation

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied

when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

In assessing the tenants' claims, I gave considerable weight to their testimony as supported by most key documents. The tenants and advocate were well prepared and organized for the hearing. The tenants presented a brief of almost 70 pages which included a 4-page summary of the several years of events surrounding this application. Their presentation was meticulous and convincing.

In contrast, the landlords submitted no documents to support their testimony.

I find the tenants have met the burden of proof on a balance of probabilities with respect to their claims. I find the landlords have failed to comply with the provisions of the Act with respect to all three rent increases. I find the rent increases unlawful and I set them aside. I find the tenants have incurred a loss in overpayment of rent. I accept the tenants' calculation of the amount of the rent paid, which was not in dispute.

I find that there is little in the way of minimization of loss the tenants could have done. They were not made aware of their rights under the Act, as required, so it is not reasonable to expect them to have contested the rent increases earlier than they did (as one purpose of the Notice is to advise the tenants of these rights).

As such, I find that that the tenants are entitled to recover the full amount over their overpayment, **\$4,657.00** and I grant a monetary award in this amount.

Pursuant to the provisions of the Act, I direct that the rent for the unit is set at \$700.00 for the duration of the tenancy. I direct the tenants may withhold the rent from the

landlords for the unit on an ongoing basis until the full amount owing is satisfied.

Conclusion

I grant the tenants a monetary order in the amount of **\$4,657.00** payable by withholding rent on an ongoing basis until satisfied in full as directed above.

I order that the rent for the unit throughout the tenancy is set at \$700.00 monthly payable on the first of the month.

I set aside all rent increases throughout the tenancy which are of no effect.

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: February 26, 2020

Residential Tenancy Branch