



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on February 28, 2020, wherein the Tenants sought to dispute a rent increase and to recover the filing fee.

The hearing of the Tenants' Application was scheduled for teleconference at 11:00 a.m. on May 5, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was assisted by her daughter, J.T. who provided testimony and submissions on behalf of the Landlord.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issue(s) to be Decided

1. Is the rent increase of March 1, 2018 and January 1, 2020 valid?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant, F.T., testified as follows. He confirmed that the tenancy began December 22, 2012 at which time rent was \$980.00 per month. The Tenant stated that the Landlord did not prepare a formal rental agreement.

The Tenant stated that on February 1, 2018, the Landlord requested an additional \$100.00 per month payable as of March 1, 2018. The Tenant stated that the Landlord did not issue a formal notice of rent increase and he paid a she was afraid of being evicted. The Tenant also stated that he was not aware that the Landlord was not able to raise the rent by this amount.

The Tenant further testified that on November 1, 2019, the Landlord asked for a rent increase of \$50.00 as of January 1, 2020. The Tenant paid the requested amount, again as he was afraid of being evicted, but this time he called the Residential Tenancy Branch as he believed the amounts requested by the Landlord were too much. After speaking with someone at the Branch he filed this Application for Dispute Resolution.

The Landlord's daughter J.T. testified as follows. She confirmed that the Landlord did not prepare a formal written tenancy agreement however she "wrote something down on a piece of paper". J.T. stated that as the tenancy started so long ago the Landlord did not keep a copy of this document.

J.T. confirmed that the Landlord only verbally asked for an increase of \$100.00 in February of 2018. Again, J.T. confirmed that the Landlord only verbally asked for an increase of \$50.00 in November of 2019.

J.T. prepared a spreadsheet setting out the allowable rent increase permitted by the *Regulations* as well as the amount requested by the Landlord and submitted that the sum of \$1,886.00 is owing to the Tenant.

J.T. acknowledged that her mother was unaware of the rent increase provisions of the *Residential Tenancy Act* and the *Residential Tenancy Regulation* when she issued the rent increases.

In reply the Tenant stated that he pays rent by cash and the Landlord had not provided receipts for payment. The Tenant also stated that he is planning to move out of the rental unit by the end of June 2020 such that he does not want to have his monetary award offset against any rent owing.

Analysis

A Landlord may not increase rent unless the rent increase is done in accordance with Part 3 of the *Residential Tenancy Act*, and Part 4 of the *Residential Tenancy Regulation*.

Part 3 of the *Act* provides as follows:

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

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.

The relevant portions of the *Regulations* read in part as follows:

Part 4 — Rent Increases

Annual rent increase

22 (1) In this section, "**inflation rate**" means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

(2) For the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows:

$$\text{percentage amount} = \text{inflation rate} + 2\%$$

(3) and (4) Repealed. [B.C. Reg. 234/2006, s. 17.]

[am. B.C. Reg. 234/2006, s. 17.]

In the case before me, the parties agreed the Landlord did not issue a Notice of Rent Increase in the approved form as required by section 42(3) of the *Act*. The Landlord also did not provide the Tenants with three months notice as required by section 42(2).

Further, the amount of the rent increase collected by the Landlord in 2018 was \$100.00 and \$50.00 in 2020. These amounts are more than the amounts permitted by the *Regulations* of 4.0% in 2018 (\$39.20) and 2.6% in 2020 (\$26.50, provided the 2018 rent increase was properly done, which it wasn't). As such, I find the Landlord collected rent increases which did not comply the *Act* and the *Regulations*.

There was no evidence before me that the Tenants agreed to the rent increase in writing. As provided for in *Residential Tenancy Branch Policy Guideline 37—Rent Increases*, 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.

Section 42(5) of the *Act* allows the Tenants to recover the amounts paid pursuant to the illegal increase. Accordingly, I find the Tenants are entitled to recover the amounts paid pursuant to the illegal rent increases and I award them compensation in the amount of \$2,950.00 calculated as follows:

Amounts paid by Tenants pursuant to illegal rent increase March 2018 to December 2019: \$1,080.00 per month	22 months x \$100.00	\$2,200.00
Amounts paid by Tenants pursuant to illegal rent increase January 2020 to May 2020 \$1,130.00 per month	5 months x \$150.00	\$750.00
Total overpaid by Tenants		\$2,950.00

As the Tenants have been substantially successful, I also find they are entitled to recover the filing fee of \$100.00 for a total award of **\$3,050.00**.

The Tenant advised that they intend to vacate the rental unit as of June 30, 2020. I therefore grant the Tenants a Monetary Order in the amount of **\$3,050.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

The Landlord was reminded that she must, pursuant to section 13(1) of the *Act*, prepare a formal written tenancy agreement and must, pursuant to section 26(2) provide her tenants with receipts for cash payments. The Tenant was also reminded they must give notice to end their tenancy in accordance with sections 45 and 52 of the *Act*.

Conclusion

The Tenants' Application is granted. The Tenants are entitled to recover the sum of \$3,050.00 representing the amount of rent paid pursuant to the illegal rent increases as well as recovery of the filing fee. In furtherance of this the Tenants are entitled to a Monetary Order in the amount of **\$3,050.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial 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: May 06, 2020

Residential Tenancy Branch