



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDCT, OLC, FFT

### Introduction

On August 5, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation, to dispute a rent increase, to order the Landlord to comply with the Act, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlords, the Tenant and the Tenant’s counsel attended the hearing and provided affirmed testimony. The parties were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Preliminary Matters – severing of issue

The issue of ordering the Landlord to comply with the Act was determined as not related to the main issues in the dispute and was severed as per *Rules of Procedure 2.3 - Related Issues*.

### Preliminary Matters – previous hearing regarding same claim

The Tenant had previously applied for a Dispute Resolution process regarding the same claim and attended a hearing with the Landlords on July 13, 2020. The July 2020 hearing lasted 75 minutes and all parties were given a full opportunity to provide testimony, make submissions and call witnesses. In the Arbitrator’s Decision, dated July 13, 2020, the Arbitrator granted the Tenant’s request to withdraw his application with leave to reapply.

The Arbitrator did not make any findings of fact or law as a result of the July 13, 2020 hearing.

### Issues to be Decided

Was the change in monthly rent in 2017, considered a rent increase, governed by Part 3 of the Act or, rather, a renegotiation of the Tenancy Agreement?

If the change in monthly rent in 2017 is found to be a rent increase, was the rent increase in accordance with Section 41 of the Act?

Should the Tenant receive a Monetary Order for compensation, in accordance with Section 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began in July 2010. The rent was \$1,400.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$700.00. Both parties agreed that there had been a 2010 Tenancy Agreement; however, indicated that they did not have a copy of the 2010 Tenancy Agreement.

The Tenant testified and provided evidence in relation to what he considers an illegal rent increase by the Landlord in May 2017. The Tenant submitted the following:

- In July 2010, the monthly rent was \$1,400.00.
- Although, he was the only one named on the Tenancy Agreement, the Landlord knew there would be other people moving into the rental unit.
- The Tenant moved into the rental unit with his father and brother in 2010.
- In 2017, the Tenant lived in the rental unit with two other people.
- The Landlord did not increase the rent between 2010 and 2017.
- In May 2017, the Landlord requested a meeting and demanded a rent increase under the threat of eviction.
- The Tenant acknowledged that he attended a meeting with the Landlords but that there was no reason for the meeting as he had not been violating any term of the agreement (Tenancy Agreement).

- The Tenant submitted receipts for his rent which demonstrated he paid rent in the amount of \$1,550.00 for May 2017, \$1,700.00 for June 2017, and then began paying \$1,775.00 from August 1, 2017 until the next rent increase in 2018.
- In response to the Landlord's testimony, the Tenant acknowledged that he did bring a form for the Landlord to sign in 2017, regarding subletting, but did not submit that form as evidence for this hearing.
- In response to the Landlord's submissions, the Tenant disagreed with the text, dated April 22, 2017, that suggested that the Tenant agreed with a new rent of \$1,775.00. The Tenant suggested that the text was tampered with.
- In response to the Landlord's submissions, the Tenant agreed with the text that indicated that the Tenant had asked the Landlord for sublet agreement forms.
- The Tenant's counsel submitted that the texts between the Tenant and the Landlord seemed "uncertain" and questioned whether the texts meant that there was a new agreement.
- The rent increase in 2018 was the allowable amount, with proper notice and on the correct form, but the Tenant still didn't agree with the 2017 increase.
- The Tenant indicated that he started a dispute resolution process with the Residential Tenancy Branch in relation to the 2018 rent increase but abandoned the process.
- The Tenant began paying a monthly rent of \$1,847.00 in September 2018.
- The rent increase in 2019 was the allowable amount, with proper notice and on the correct form and the Tenant began paying monthly rent in the amount of \$1,893.00 in December 2019.
- In March and April 2020, the Landlord attempted to present an agreement to the Tenant that was backdated to May 2017. The Tenant did not sign this agreement but did submit as evidence.
- As of April 2020, the Tenant began paying the Landlord \$1,492.40 as monthly rent; the Tenant's interpretation of what the rent should be based on the original rent combined with the rent increases in 2018 and 2019.

The Tenant has claimed for compensation as follows:

Item	Amount
2017- overpayment of rent	\$2,700.00
2018- overpayment of rent	4,548.00
2019- overpayment of rent	4,692.00

2020- overpayment of rent	1,341.00
<b>Total of Tenant's Claim</b>	<b>\$13,281.00</b>

The Landlord provided testimony and evidence in response to the Tenant's claim and submitted the following:

- When the tenancy began in 2010, the Tenant's father was present and he indicated that he did not want to be on the Tenancy Agreement and, therefore, only the Tenant was on the Tenancy Agreement.
- The 2010 Tenancy Agreement indicated that the Tenant would be the sole renter and that the rental unit could not be subleased to other tenants without the Landlord's approval.
- The Landlord stated that the 2010 Tenancy Agreement had been misplaced and was not available as evidence.
- The Landlord had noticed that there were multiple tenants living in the rental unit in 2017, and that the Tenant had made modifications to the yard of the residential property to increase the parking for the other occupants (photos provided).
- The Landlord invited the Tenant to a meeting at the Landlord's home on April 19, 2017. The Landlord submitted that the Tenant, the Tenant's father, the Landlords and the Landlord SP's wife were present at the April 19, 2017 meeting and that they were there to discuss a new rental agreement based on the Tenant renting out rooms to other occupants, and the need to pay rent on time.
- During the meeting, it was stated that, in order for the Tenant to stay in the rental unit and continue to rent out rooms, there would have to be a new agreement with a rent increase.
- At the end of the meeting, the Tenant agreed that he wanted to continue "subletting" the rooms and agreed to a monthly rent of \$1,900.00.
- The Tenant called the Landlord over the next few days to discuss a lower rent and eventually the Landlord agreed to \$1,775.00/month via text.
- The Landlord stated that he believed that he and the Tenant had reached a mutual agreement based on multiple occupants living in the rental unit and a new monthly rent.
- The Landlord DP submitted a copy of several text messages that he had with the Tenant in April 2017 that demonstrated that the Tenant attended the meeting on April 19, 2017; agreed to a new rent of \$1,775.00 on April 22, 2017; and, had asked the Landlord about receiving "sublet permission forms".
- The Landlord stated that he attempted to have the Tenant sign the new agreement in 2017; however, the Tenant refused, as he did again in 2020.

- The Landlord DP stated that the Tenant brought him his (Tenant's) own form, sometime after the meeting in 2017, and that he (Landlord) signed the form, giving the Tenant permission to have multiple occupants. The Landlord did not receive a copy of this form.
- The Tenant has been underpaying his rent, in the amount of \$400.60, since April 1, 2020.

The Landlord submitted that they negotiated a new agreement with the Tenant in April 2017 because the Tenant was renting out rooms in the rental unit at that time. The difference in rent was not due to a rent increase of an ongoing tenancy.

### Analysis

In this case, the Tenant argues that the Landlord failed to raise the rent in May of 2017 in accordance with sections 41 and 42 of the Act.

The Landlords submit that sections 41 and 42 of the Act do not apply as they negotiated the terms of a new Tenancy Agreement with the Tenant based on a new arrangement for the rental unit.

The Tenant and the Landlords provided conflicting testimony regarding the terms of the original Tenancy Agreement; the details of the meeting in April 2017 and the subsequent change in monthly rent. There are no written Tenancy Agreements to rely.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.*

Based on the testimony and evidence, I find that the Landlord initiated a meeting with the Tenant on April 19, 2017 to discuss matters regarding the tenancy.

The Landlord stated the meeting was to resolve the issues of the Tenant regularly paying his rent late, to address too many occupants in the rental unit, and to potentially end the tenancy based on these issues or negotiate a new agreement.

The Tenant stated that the reason the Landlords wanted to meet was to raise the rent. The Tenant stated he wasn't violating the tenancy agreement and didn't require permission from the Landlords to have other roommates. The Tenant stated that he didn't agree to a new agreement or a rent increase during the meeting.

When I consider the reason for the meeting and what may have been discussed, I note the following:

- A text message, submitted by the Landlord, indicating that the Tenant and his father met with the Landlords on April 19, 2017. (accuracy uncontested by the Tenant)
- A text message to the Tenant, submitted by the Landlord, indicating that they (the Landlords) are "ok with 1775." and a response from the Tenant stating, "Ok. I'm busy all day tomorrow. I'll call on Monday or Tuesday. I'm going to pay early from now on." (accuracy contested by the Tenant)
- Evidence from the Tenant that he began paying a higher rent on May 1, 2017, in the amount of \$1,550.00.
- Evidence from the Tenant that he began paying a higher rent on June 1, 2017, in the amount of \$1,700.00.
- Evidence from the Tenant that he began paying a higher rent on August 1, 2017, in the amount of \$1,775.00.
- Three texts on different dates in July 2017, submitted by the Landlord, that show the Tenant asked the Landlord about obtaining the "permission to sublet agreement forms". In one of the texts, the Tenant states, "You said 4 months ago that I would have it no problem." (accuracy uncontested by the Tenant)
- The undisputed testimony of the Tenant that he presented an agreement to the Landlord and obtained his signature to permit subletting of the rental unit in 2017.

Based on the above evidence, I find that the meeting on April 19, 2017 involved discussions around other occupants in the rental unit, negotiations regarding rent, and changes to the terms of the tenancy.

I acknowledge that the Tenant claimed that the Landlord's text, where the Tenant agreed to the rent of \$1,775.00, was fabricated, yet I noted that the Tenant began paying the rent of \$1,775.00 in monthly rent as of August 1, 2017. As such, I find that the Tenant agreed to the newly established monthly rent of \$1,775.00.

The Tenant stated that there was no new agreement made in 2017, yet I find, based on both parties' submissions, that the Tenant presented an agreement to the Landlord in 2017 to obtain permission to sublet to other occupants. The Landlord described signing a form presented to him from the Tenant that gave the Tenant permission to rent out rooms in the rental unit. I find that there were new terms agreed to as a result of the April 2017 meeting and that at least one of them was agreed to in writing.

\*Note – part of the definition of sublet includes the original tenant moving out of the rental unit. The Tenant was very clear that he has never moved out of the rental unit and that he never intended to move out of the rental unit. In my experience, many people mistakenly use the term sublet when referring to renting out rooms or having roommates in a rental unit.

I find that the Landlord furthers his credibility, (about the meeting specifically) when he stated that the Tenant's late payments of rent were also a topic during the April 2017 meeting, and then the Tenant responded to the Landlord in a text on April 22, 2017, saying; "I'm going to pay early from now on."

The Tenant's legal counsel submitted that the text messages between the Landlord and the Tenant regarding the amount of rent in 2017 were not clear and did not amount to a new agreement. I refer to the definition of a "Tenancy Agreement" as defined in the *Residential Tenancy Act* (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

When I consider whether the outcome of the communications between the Landlord and the Tenant that began on April 19, 2017 formed a new tenancy agreement, I include the following:

- Confirmation by both parties that they met on April 19, 2017 to discuss matters of the tenancy.
- The text message that indicated the Tenant is agreeing to an amount of "1775" and confirmation from the Tenant that he began paying \$1,775.00 in monthly rent in August 2017.

- The text message that indicates that the Tenant is "...going to pay early from now on."
- The consensus of both parties that the Tenant received a signature from the Landlord in 2017 on a written agreement to rent out other rooms in the rental unit.
- The testimony of the Tenant that he did have two new roommates in 2017.
- The photos submitted by the Landlord to demonstrate that the Tenant created more parking space out front of the rental unit with the suggestion that this was to accommodate parking for the other roommates.

I find, based on the evidence presented , that the Tenant and the Landlord negotiated a new, oral tenancy agreement in 2017 that established the monthly rent at \$1,775.00, allowed the Tenant to rent out rooms in the rental unit to other occupants, and confirmed that the Tenant would begin paying the rent on time.

As I have found that the Landlord and the Tenant entered into a new agreement in 2017, I find that the Tenant has failed to provide sufficient evidence that the Landlord raised the rent in contravention of the Act. As such, I dismiss the Tenant's application to dispute a rent increase.

Although I found that the conversation and subsequent oral (that included text and written) agreements that occurred in 2017 have established a new tenancy agreement versus a rent increase; I have not addressed the Tenant's claim that the Landlord did not provide him with a copy of a new tenancy agreement in 2017.

Section 13 of the Act includes that a landlord must prepare in writing every tenancy agreement; and, within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

During the hearing, the Landlord claimed that he attempted to have the Tenant sign a new tenancy agreement in 2017. The Tenant stated that the Landlord never attempted to have him sign a new tenancy agreement until 2020 and that that agreement was back-dated to 2017. To make a finding in this regard I consider that both parties agreed that the Tenant pursued the Landlord to sign an agreement to rent out rooms in 2017; and, that the Tenant submitted a tenancy agreement dated for May 2017 that the Landlord presented to him in the spring of 2020. I find, based on a balance of probabilities, that it was unlikely that the Landlord prepared a new tenancy agreement in 2017 and attempted to give the Tenant a copy. As such, I find the Landlord failed to comply with the Act when entering into a new tenancy agreement.



By failing to prepare and provide a written tenancy agreement, I find that the Landlord failed to complete the most basic of responsibilities when negotiating a new agreement with the Tenant. As a result, I find the Landlord has significantly contributed to the confusion and level of conflict during this tenancy.

*Residential Tenancy Policy Guideline #16 – Compensation for Damage or Loss* discusses that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Both parties agreed that the Tenant began paying a monthly rent of \$1,492.40 as of April 1, 2020, instead of the rent that was established in December 2019 in the amount of \$1,893.00. As the Landlord noted, this is \$400.60 less than it should be. As of the date of this Decision, I find the Landlord has been underpaid for six months, in the amount of \$2,403.60.

As a result of my finding that the Landlord failed to prepare and provide a written tenancy agreement in 2017; I award the Tenant \$2,403.60 in nominal damages. Rather than issuing a monetary order, and in accordance with section 62(3) of the Act, I authorize the Tenant to keep this amount instead of paying the Landlord for the outstanding rent between April 1, 2020 and September 30, 2020.

As this tenancy is continuing, I will clarify the following for the benefit of both the Landlord and the Tenant:

- As of September 30, 2020, there are no rental arrears in relation to this tenancy.
- As of October 1, 2020, the monthly rent for the Tenant will be \$1,893.00.

Although I find that the Tenant failed to establish a monetary claim, I find that the Application for Dispute Resolution had merit, and as such, award the Tenant compensation in the amount of \$100.00 for the filing fee. As such, I authorize the Tenant to deduct \$100.00 from a future rent payment to the Landlord, in accordance with Section 72 of the Act.

### Conclusion

I dismiss the Tenant's application to dispute a rent increase without leave to reapply.

I award the Tenant nominal damages in the amount of \$2,403.60 in compensation for the Landlord failing to prepare and deliver a copy of a tenancy agreement in 2017. The amount of compensation is the same amount of outstanding rent the Tenant owes the Landlord from April to September 2020; therefore, there is no need for a monetary order – no exchange of monetary compensation necessary.

I award the Tenant \$100.00 in compensation for the filing fee and authorize the Tenant to deduct the amount from a future rent payment.

As of October 1, 2020, the monthly rent for this tenancy will be \$1,893.00.

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 23, 2020

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Residential Tenancy Branch