



# 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:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- disputation of a rent increase, pursuant to sections 42 and 43; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties and their wives attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was served with the tenant's application for dispute resolution via registered mail on or around October 25, 2020.

### Preliminary Issue- Tenant's Evidence

The tenant testified that the landlord was served with the tenant's evidence on December 21, 2020, via registered mail. A receipt for same was entered into evidence. The landlord's wife testified that the landlord received the tenant's evidence on December 29, 2020. The tenant testified that the package was available for pick up at the post office on December 22, 2020. The above testimony was confirmed by the Canada Post website.

The landlord's wife testified that the landlord did not have time to review and respond to the tenant's evidence and that since the landlord received the tenant's evidence less

than 14 days before this hearing, the tenant's evidence should not be considered. The tenant testified that the evidence package was deemed served on the landlord more than 14 days before this hearing and was not late.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") state that evidence should be served on the respondent at least 14 days before the hearing.

Section 90(a) of the *Act* states that a document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received if given or served by mail, on the 5th day after it is mailed. I find that the tenant's evidence was deemed received by the landlord on December 26, 2020, which is more than 14 days before this hearing. I find that the tenant's evidence was served in accordance with section 3.14 of the *Rules* and is admitted into evidence. I note that the evidence was available for pick up as of December 22, 2020 and the tenant should not be penalized by the landlord's failure to pick up the mail.

I further note that the admittance of the tenant's evidence does not change the outcome of this decision as the majority of the evidence was the tenant's statement which was provided verbally in the hearing and the tenant's other evidence pertains to facts agreed upon by both parties during the hearing.

### Issues to be Decided

1. Is the tenant entitled to an Order directing the landlord to comply with the *Act* regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the rent increase null and void, pursuant to sections 42 and 43 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2017 and is currently ongoing. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The initial rent for the subject rental property was \$900.00 due on the first day of each month.

### Tenant's Evidence

The tenant testified that in the second week of June of 2019 the landlord approached him while he was outside cleaning his car and told him that July 2019's rent was increasing to \$1,000.00 per month. The tenant testified that he did not agree to the rent increase and told the landlord that he would speak to his wife about it. The tenant testified that on July 2, 2019 he transferred the landlord \$900.00 for July 2019's rent. The tenant testified that after the landlord received the rent, the landlord again approached him and demanded an additional \$100.00 which the tenant said was too much. The tenant testified that the landlord told him that he was lucky that his rent had not increased for the last two years and that if he could not pay the increase, the tenant should move out. The tenant testified that the landlord said that if the tenant wanted to stay rent would have to increase by at least \$50.00.

The tenant testified that he was a recent immigrant to Canada and did not know all the laws and was afraid of getting evicted, so he sent the landlord \$50.00 on July 2, 2019 and has been paying \$950.00 per month for rent ever since. Both parties agree that the tenant has paid \$950.00 for rent from July 2019 to the present date.

The tenant testified that in the summer of 2020 the landlord approached him again and told him that rent for October 2020 would be increased by \$25.00 and that rent for January 2021 would be increased by a further \$25.00.

The tenant testified that the landlord has never provided a written notice of rent increase.

### Landlord's Evidence

The landlord's wife testified that the tenant's rent was first set to increase in 2018 but the tenant asked that their rent not be increased due to financial difficulties. The landlord's wife testified that the landlord agreed to freeze the tenant's rent until April 30, 2019. The landlord's wife testified that the tenant verbally agreed that on May 1, 2019

the landlords would add the \$36.00 rent increase that was initially intended for 2018 plus the maximum allowable amount for 2019. The landlord's wife testified that the landlord only sought a rent increase in the amount of \$50.00 effective May 1, 2019 but the tenant refused. The landlord's wife testified that the tenant finally complied for July 2020 after the landlord firmly reminded the tenant of their agreement.

The landlord's wife testified that had the tenant requested a written notice of rent increase, one would have been provided. The landlord's wife denied that the landlord verbally requested any rent increases for 2020 or 2021.

Both parties agree that no written notice of rent increase has ever been served on the tenant.

### Analysis

Sections 42 of the *Act* states:

**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.

I find that the July 2019 rent increase is of no force or effect because:

- the landlord did not serve the tenant with a notice of rent increase that complies with section 42 of the *Act*, contrary to section 42(3) of the *Act*; and
- the rent increase was in an amount over and above that permitted by the regulations, contrary to section 43(1)(a) of the *Act*.

I find that it was the landlord's responsibility to provide the tenant with a notice of rent increase that complied with the *Act*, it was not the tenant's responsibility to request one.

I find that the parties did not engage in a written agreement to increase the rent over and above that permitted by the legislation.

Section 43(5) of the *Act* states that 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. I find that the tenant is entitled to deduct \$950.00 from rent due to the landlord, which is comprised of \$50.00 per month from July 2019 to January 2021.

I find that rent is \$900.00 per month and that no further rent increases are permitted unless they are made in accordance with this *Act*.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00 from rent due to the landlord.

Pursuant to section 62 of the *Act*, I Order the landlord to only issue notices of rent increase that comply with the *Act*.

### Conclusion

The tenant is entitled to deduct \$1,050.00 from rent due to the landlord.

Rent for the subject rental property is \$900.00 due on the first day of each month.

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: January 11, 2021

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Residential Tenancy Branch