



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 08000648 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FFT

Introduction

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

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

The tenant, the tenant's support person and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served with this application for dispute resolution via registered mail on June 10, 2021. A Canada Post registered mail receipt for same was entered into evidence. The agent testified that the landlord received the tenant's application for dispute resolution via registered mail. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

Both parties confirmed their email addresses for service of this decision and order.

Issues to be Decided

1. Did the landlord increase the rent more than the amount permitted by law?
2. Is the tenant entitled to recover damages for a rent increase over that permitted by law?
3. 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*?
4. 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 August 1, 2009 and is currently ongoing. A security deposit of \$825.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the agent personally served the tenant with RTB form #7- Notice of Rent Increase on July 30, 2020. The Notice of Rent Increase was entered into evidence and states:

- the date you last rent increase came into effect was 1 Nov 2019
- the current rent is \$2050.00
- the rent increase is \$100.00
- your new rent will be \$2,150.00
- your new rent is payable starting on 1 Nov 2020

The tenant testified that at the time the Notice of Rent Increase was served, she did not know that there was a freeze on rent increases and so she paid the rent increase from November 1, 2020 to the present date. The tenant testified that since the rent increase was not legal she is entitled to the return of the illegal rent increase she paid to the landlord. Both parties agree that the landlord sold the subject rental property and that a new landlord collected rent from June 1, 2021 going forward.

The tenant's application for dispute resolution seeks to recover the rent increase paid from November 1, 2020 to May 1, 2021, seven months at \$100.00 per month for a total of \$700.00.

The landlord testified that for much of this tenancy rent was not increased and that the tenant did not have a problem paying the increased rent.

Analysis

Section 43 of the *Act* states:

- (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.

Section 43.1(2) of the *Act* states:

- (2)A notice given under this Part for an increase based on a calculation made under section 43(1) (a) has no effect if the notice
 - (a)is received before September 30, 2021, as determined under subsection (1) of this section, and
 - (b)has an effective date that is after March 30, 2020 and before January 1, 2022.

Pursuant to section 43.1(2) of the *Act*, I find that the Notice of Rent Increase has no effect because it was received before September 30, 2021 and has an effective date

that is after March 30, 2020. I find the July 30, 2020 Notice of Rent Increase is null and void.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the landlord was not permitted to serve the tenant with the notice of rent increase. I find that this breach resulted in a quantifiable and proved loss to the tenant in the amount of \$100.00 per month from November 2020 to May 2021. Pursuant to section 67 of the *Act*, I award the tenant a monetary award for \$700.00.

Section 62(3) of the *Act* of the *Act* states:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

As the landlord is no longer the owner of the subject rental property and the relationship between the parties is no longer that of landlord and tenant, I dismiss the tenant's application for an Order for the landlord to comply with the *Act* regulation or tenancy agreement as the issue is no longer applicable.

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*.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Improper rent increase	\$700.00
Filing Fee	\$100.00
TOTAL	\$800.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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: September 27, 2021

Residential Tenancy Branch