



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNL, MNDCT, OLC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 16, 2021 (the “Application”). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property
- To dispute a rent increase that is above the amount allowed by law
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenants appeared at the hearing. The Landlord appeared at the hearing with S.B. (the “Landlords”) to assist. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The parties provided the correct rental unit address which is reflected on the front page of this decision.

The Tenants proceeded with the dispute of a rent increase that is above the amount allowed by law and withdrew the remaining requests. The Landlords agreed to the withdrawal. I have considered the dispute of a rent increase that is above the amount allowed by law and the request to recover the filing fee. The remaining issues are withdrawn by consent of the parties.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlords confirmed receipt of the hearing package and Tenants' evidence.

The Tenants testified that they did not receive the Landlord's evidence. The Landlords testified that their evidence was served on the Tenants at the rental unit by registered mail on November 02, 2021. The Landlords provided Tracking Number 105, which I looked up on the Canada Post website. The website shows Canada Post tried to return the package to the sender due to an incomplete address. The Landlords testified that they have not received anything from Canada Post.

The Landlords were required to serve their evidence on the Tenants in accordance with rule 3.16 of the Rules and section 88 of the *Residential Tenancy Act* (the "*Act*"). Pursuant to section 90(a) of the *Act*, parties can be deemed to have received registered mail sent to them if they fail to pick it up or otherwise avoid service. However, here I am not satisfied Canada Post attempted to deliver the package to the Tenants due to the comments on the website about an incomplete address and the package being returned to the sender. The purpose of sending packages by registered mail is so that the sender can track the package. The Landlords should have checked the tracking information for the package and re-sent the package with a complete address. In the circumstances, I am not satisfied the Landlords served the Tenants with their evidence in accordance with rule 3.16 of the Rules or section 88 of the *Act*.

I heard the parties on whether the Landlord's evidence should be admitted or excluded. The Landlords sought admission of the evidence. The Tenants sought exclusion of the evidence. I exclude the evidence, other than the written tenancy agreement, pursuant to rule 3.17 of the Rules as I find it would be unfair to consider evidence the Tenants have not seen or had a chance to respond to. However, I admit the written tenancy agreement because all parties signed it and therefore the Tenants are aware of it and were able to respond to it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Has there been a rent increase that is above the amount allowed by law?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The Landlords submitted a written tenancy agreement. There is no start date on the agreement. The agreement states that it is a month-to-month tenancy. Rent was \$2,000.00 due on the first day of each month. The Tenants paid a \$1,000.00 security deposit. The agreement has an addendum. The agreement is signed by the Tenants and Landlord.

The Tenants testified that they signed the written tenancy agreement but it may not have stated that it was a month-to-month tenancy when they signed it because it was a fixed term tenancy for one year. The Tenants testified that they provided the Landlord with a cheque or money order at the start of the tenancy for \$25,000.00 to cover the entire year of rent. The Tenants testified that they moved into the rental unit August 26, 2020.

I note that the Tenants' documentary evidence shows that \$23,000.00 was paid at the start of the tenancy.

The Landlords testified that the written tenancy agreement is accurate and this was a month-to-month tenancy. The Landlords testified that the start date of the tenancy was August 15, 2020 and the Tenants moved into the rental unit August 26, 2020. The Landlords testified that the Tenants offered to pay rent for one year in advance in order to secure the rental unit.

The Tenants sought return of \$5,000.00 they paid to the Landlord.

The Tenants testified that they were provided improper notice to vacate the rental unit because the Landlord's family member was moving in. The Tenants testified that they did not know the Landlord could not end the fixed term tenancy early and were frantic about finding another place. The Tenants testified that they frantically offered the Landlord \$10,000.00 to stay in the rental unit until September 01, 2021. The Tenants testified that the Landlord told them they could stay until September 01, 2021 and only

pay \$5,000.00. The Tenants testified that they paid the \$5,000.00 and now sought return of this.

In relation to July and August rent, the Tenants testified that the Landlord returned these two months of rent given the notice to vacate and that the Tenants returned this to the Landlord when the parties agreed the Tenants could stay until September 01, 2021. The Tenants testified that they did stay in the rental unit until September 04, 2021.

The Tenants acknowledged they came to an agreement with the Landlord to pay the \$5,000.00 but argued that this was based on a misunderstanding of their rights. The Tenants argued that the \$5,000.00 was a rent increase because they paid it to stay in the rental unit longer.

The Landlords agreed the Tenants paid them \$5,000.00 to stay in the rental unit until September 01, 2021 but submitted that this was not a rent increase. The Landlords testified that they did not raise the rent and that rent was paid in advance. The Landlords testified that the Tenants offered the \$5,000.00 and this was used to accommodate the family member who was supposed to move into the rental unit.

The Tenants submitted the notices to vacate received from the Landlord which were handwritten letters dated April 26, 2021 and June 28, 2021. The April 26, 2021 letter states that the Landlord plans to move into the rental unit and therefore the Tenants must vacate by June 30, 2021. The June 28, 2021 letter refers to a verbal agreement between the parties to extend the vacate date to August 31, 2021. The letter states that the Landlord's daughter will be moving into the rental unit.

### Analysis

Section 1 of the *Act* sets out the definition of a "fixed term tenancy" and states:

"fixed term tenancy" means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends;

Part 3 of the *Act* addresses rent increases and states:

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...

(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 parties disagreed about whether the tenancy was a month-to-month tenancy or for a fixed term of one year. I find the tenancy was a month-to-month tenancy because this is what the written tenancy agreement, which was signed by all parties, states. I do not accept that the month-to-month notation on page two of the agreement was not there when the Tenants signed the agreement for two reasons. First, the Tenants have not provided evidence to support their testimony on this point whereas the written tenancy agreement in evidence supports that the month-to-month notation was there when the Tenants signed the agreement. Second, the Tenants initialed the relevant box on page two of the agreement and the only additional information contained in this box is that the tenancy is a month-to-month tenancy. There would have been no reason for the Tenants to initial this box if it did not indicate that this was a month-to-month tenancy because there would have been nothing additional to acknowledge.

I do not find that the Tenants paying rent for one year upfront changed the tenancy into a fixed term tenancy for the following reasons. There was a clear intention between the parties that this be a month-to-month tenancy as this is what is stated in the written tenancy agreement signed by all parties. I do not find that any implied term that could result from the Tenants paying rent for one year upfront supersedes the clear written term in the tenancy agreement. Further, there is no connection between the Tenants paying rent for one year upfront and the tenancy being a fixed term tenancy because there is no requirement that tenants pay rent for the entire fixed term at once in a fixed term tenancy and it is unusual for tenants to do so.

I do not accept that the \$5,000.00 sought by the Tenants was a rent increase for the following reasons. Part 3 of the *Act*, by its wording, contemplates rent increases imposed by a landlord. Here, the Landlord did not impose a \$5,000.00 increase. The Tenants offered to pay the Landlord to change their position about when the Tenants had to vacate the rental unit and the Landlord accepted the \$5,000.00 for this purpose. The \$5,000.00 was offered by the Tenants, it was not imposed by the Landlord. Further, I do not find a connection between rent and the \$5,000.00 paid. Rent for the unit was \$2,000.00 per month and the Tenants paid this up until they vacated. The \$5,000.00 was a lump sum separate and apart from rent. The \$5,000.00 was not rent plus a percentage increase or a dollar amount increase. As well, although the absence of a Notice of Rent Increase form is not determinative of whether an amount is a rent increase, I do note that the Landlord did not issue the Tenants a Notice of Rent

Increase in relation to the \$5,000.00 nor would this have been reasonable to expect given the nature of the agreement between the parties.

I find that the \$5,000.00 was paid pursuant to an agreement between the Tenants and Landlord about when the tenancy would end. It was open to the parties to come to this agreement if they wished. The Tenants cannot now attempt to invalidate the agreement by calling the \$5,000.00 a rent increase when this was not the intention of the parties when the agreement was made.

I note that I do not find it particularly relevant whether the tenancy agreement was a month-to-month tenancy or for a fixed term of one year. Regardless of the term of the tenancy, the Landlord could not end the tenancy pursuant to the *Act* through a handwritten letter rather than a notice to end tenancy on an approved RTB form. Regardless of the term of the tenancy, the Tenants were not required to vacate the rental unit based on the handwritten letter. I acknowledge that the Tenants were not aware of this at the time they offered to pay the Landlord to allow them to stay in the unit until September 01, 2021; however, parties are expected to know their rights and not knowing them does not invalidate agreements made in relation to a tenancy.

I find it clear from all the evidence that the Tenants offered to pay the Landlord a lump sum to stay in the rental unit until September 01, 2021 and the Landlord accepted this offer and therefore the parties came to an agreement. The Tenants did stay in the rental unit until September 04, 2021 and therefore the Landlord followed through with their part of the agreement. The Tenants cannot now seek to have the \$5,000.00 returned on the basis that they did not know their rights as this is not a basis to invalidate the agreement between the parties.

Given the Tenants were not successful in the Application, the Tenants are not entitled to reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 17, 2021

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Residential Tenancy Branch