



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **DRI, OLC**

Introduction

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

1. A dispute of a rent increase pursuant to Section 43 of the Act; and,
2. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62 of the Act.

The hearing was conducted via teleconference. The Landlord, HYH, and the Tenant, SM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

SM served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on August 24, 2021 (the "NoDRP package"). SM referred me to the Canada Post registered mail tracking number as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the documents for this hearing five days after mailing them, on August 29, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to have the rent increase cancelled?
2. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties agreed that this fixed term tenancy began from August 1, 2020 and to July 30, 2021. After July 30, 2021, the tenancy turned to a month-to-month tenancy. Monthly rent is \$630.00 payable on the first day of each month. A security deposit of \$315.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenant still resides in the rental unit.

The Tenant states she has not received a formal rent increase notice, but the Landlord has discussed this with her. The Tenant stated that the Landlord has engaged in conversations with the Tenant that since the fixed term tenancy ended on July 30, 2021, the Tenant and Landlord need to sign a new lease agreement. The Tenant states the Landlord wants \$750.00 in rent.

The Tenant argued that as there is a rent freeze in place right now, the Landlord cannot impose a rent increase without a proper notice. The Tenant wants the Landlord to know she must comply with the legislation.

The Landlord testified that she and the Tenant agreed at the end of the fixed tenancy, that they would sign a new tenancy agreement, or the Tenant would vacate the room. In the tenancy agreement it is handwritten in section 2. Beginning and Term of the Agreement, that *Based on both side agreement to sign another lease or tenant vacant room*. The Landlord now knows that at the end of the fixed term tenancy, the tenancy agreement became a month-to-month tenancy agreement.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 5 of the Act is of assistance, it states:

This Act cannot be avoided

- 5 (1) *Landlords and tenants may not avoid or contract out of this Act or the regulations.*
- (2) *Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

The Tenant applied to dispute a rent increase. She was not formally provided with a formal notice of a rent increase. She wants the Landlord to know that the legislation applies to their tenancy. I find this tenancy is governed under the Act and that the Landlord cannot contract out of the Act's provisions as stated in Section 5.

In 2021, rent increases were frozen due to the *Emergency Program Act* and *COVID-19 Related Measures Act*. Current annual rent increase notices must have an effective date no earlier than January 1, 2022, and the maximum rent increase allowable is 1.5%. In the Act, Part 3 – What Rent Increases Are Allowed, provides the Landlord with legislative guidance about rent increases. In the Residential Tenancy Regulation, Part 4 – Rent Increases, provides further information. Residential Tenancy Policy Guideline #37 deals with rent increases and provides more user-friendly reading to understand issues that are relevant to rent increases. As I find this tenancy is governed under the Act, I order that the Landlord must comply with the Act, regulations and tenancy agreement in her conduct in this tenancy.

If the Landlord needs further one-on-one assistance, Information Officers in the RTB office can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602

This RTB website deals with rent increases:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases>

Conclusion

As no formal notice was provided for a rent increase, and we are in a period of rent increase freeze, the Landlord cannot impose a rent increase at this time unless it complies with the Act.

I order that the Landlord must comply with the Act, regulations and the tenancy agreement in her conduct around this tenancy.

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: December 16, 2021

Residential Tenancy Branch