



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, DRI, MNDCT, OLC, FFT

### Introduction

On August 17, 2021, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- for an order for the Landlord to make repairs to the rental unit.
- to dispute an illegal rent increase.
- For money owed or compensation for damage or loss.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenant and the Landlord were present at the hearing. The Landlord was assisted by his agent. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The Landlord's documentary evidence was confirmed received by the Tenant. The Tenant did not provide any documentary evidence. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

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.

### Preliminary and Procedural Matters

The Tenant asked for the hearing to be adjourned until a later date. She stated that she wanted to make arrangements to have an advocate assist her. The Tenant was asked what steps she has taken to arrange an advocate for this hearing, and she replied that

she asked her advocate to assist her three weeks ago; however, she is not available. The Tenant applied for dispute resolution four months ago and was asked why she waited so long to start making arrangements. The Tenant replied that she also tried to contact her advocate about 6 weeks ago. The Tenant stated that she does not know how to present her evidence. The Tenant was reminded that she does not have any documentary evidence and simply needs to explain her claim on why she is seeking the relief sought.

The Landlord was asked if they would agree to an adjournment. The Landlord stated that they are not in agreement to have this matter adjourned. The Landlord also pointed out that there is another hearing scheduled in January 2022 based on a One Month Notice to End Tenancy for Cause that was issued by the Landlord due to repeated late payment of rent. Adjudication of that matter is not included in this hearing.

The Tenant's request for an adjournment was denied. The Tenant had four months to prepare for the hearing, provided no evidence, and Landlord is ready to proceed. The hearing proceeded and I find that the Tenant was able to clearly explain her claims.

The parties have also participated in a previous hearing on August 24, 2021. The parties were offered an opportunity resolve this dispute by reaching a settlement in accordance with section 63 of the Act. The parties were unable to reach a settlement agreement.

#### Issues to be Decided

- Is the Tenant entitled to an order that the Landlord make repairs to the unit?
- Did the Landlord issue an illegal rent increase?
- Is the Tenant entitled to compensation for medication costs?
- Should the Landlord be ordered to comply with a specific section of the Act or tenancy agreement?

#### Background and Evidence

The Tenant testified that the tenancy began in June 2019 and was on a month-to-month basis. The parties testified that the Landlord purchased the residential property in March 2021 and inherited the tenancy. The parties agreed that rent in the amount of \$700.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the original landlord a security deposit of \$350.00.

#### Illegal Rent Increase

The Tenant is disputing a rent increase. The Tenant testified that that the Landlord gave her a Notice of Rent Increase on August 26, 2021, with an effective date of December 1, 2021. The Notice of Rent Increase indicates that the rent is increasing from \$700.00 to \$1,000.00 each month.

The Tenant initially testified that there was no written agreement between the parties that she agreed to the additional rent increase. Later in the hearing the Tenant changed her testimony and stated that there was a written agreement with the Landlord dated March 20, 2021 where she signed and agreed to a rent increase of \$300.00 per month.

The Tenant testified that the Arbitrator in a previous hearing voided the rent increase agreement. The Tenant also stated that since signing the agreement she now has more information on rent increases and percentages of rent increases.

In response, the Landlord provided testimony that they discussed a rent increase with the Tenant and an agreement was reached and put into writing which was signed by the Tenant. This agreement states that the rent increase will be effective April 1, 2021, however, the Landlord cancelled the implementation of the rent increase when the Landlord became aware that the previous Landlord had increased the Tenant's rent in September 2020.

In the decision from the previous hearing the Arbitrator writes:

*"When the previous landlord increased the rent to \$800.00 per month on September 30th, 2020, Ministerial Order 89/2020 was in effect, prohibiting rent increases. For a rent increase to comply with part 3 of the Act, the landlord must serve the tenant with a notice of rent increase at least 3 months before the effective date of the increase. Increasing rent by means of entering into a new tenancy agreement is an attempt to thwart the Act and the regulations. As the rent increase has been found to be non-compliant with the Act and regulations, as well as being prohibited by Ministerial Order 89/2020, the base rent for the rental unit reverts to the original amount stated on the initial tenancy agreement signed on June 27, 2019, \$700.00 per month."*

Since the September 30, 2020 rent increase was cancelled, the current Landlord then issued the Notice of Rent Increase dated August 26, 2021 giving the Tenant more than three months before the agreed upon rent increase would take effect. The Landlord stated that when a rent increase was discussed with the Tenant, she said she will pay \$1,000.00 to \$1,100.00 per month.

The Landlord stated that the Arbitrator's decision does not state that the written agreed upon rent increase was voided. The Landlord stated that the illegal increase from the previous Landlord was voided.

### Repairs

The Tenant stated that the bathroom was in need of repair prior to when the Landlord purchased the residential property. The Tenant stated that there is an issue with the tiles and grout in the shower/tub, and she is worried that water could get behind the walls and cause damage.

The Tenant testified that the bathroom ventilation fan is not working and there is a lot of humidity in the bathroom.

The Tenant testified that on April 18, 2021 she asked the Landlord to make repairs to the bathroom. She testified that the Landlord replied to her stating that this is not a big concern because the shower still works, and she can open the window for ventilation.

The Tenant is seeking an order for the Landlord to make repairs to the shower and ventilation fan.

The Landlord testified that the Tenant mentioned the shower and ventilation fan to him, and she also told him that the previous Landlord said he was going to make those repairs.

The Landlord stated that repairs to the shower area are not an emergency and that having use of the fan is not a necessity because she can open the bathroom window. The Landlord stated that he asked the Tenant to provide photographs of the shower, but she did not provide him with any. The Landlord stated that he has not attended the rental unit to inspect the shower area.

The Tenant stated that the Landlord's agent attended the rental unit unannounced and wanted to look at the bathroom; however, the Tenant did not permit him into the unit.

### Money Owed or Compensation for Damage or Loss

The Tenant is seeking compensation of \$150.00 from the Landlord to cover costs of her medication. The Tenant testified that she has spent money on medication due to the stress caused by the Landlord.

In reply, the Landlord testified that he has followed the *Residential Tenancy Act* and cannot speak to the Tenant's personal issues.

#### Order for the Landlord to Comply

The Tenant stated that there has been constant interaction between her, and the Landlord and she wants the Landlord to leave her alone.

The Landlord stated that the Tenant failed to pay the rent increase that was due on December 1, 2021. The Landlord stated that there is another hearing upcoming related to the One Month Notice to End Tenancy for Cause for repeated late payment of rent.

#### Analysis

Residential Tenancy Policy Guideline # 37 Rent Increases provides the following information:

Under section 43 of the Residential Tenancy Act (RTA), a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations ("annual rent increase").
- **agreed to by the tenant in writing ("agreed rent increase").**
- ordered by the director on an application in the circumstances prescribed in the regulations ("additional rent increase").

*A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. The tenant's rent can only be increased once every 12 months.*

Section 42(1) of the Act provides that 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) provides that 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.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Section 33 of the Act provides that “emergency repairs” means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

### Rent Increase

I find that the Tenant and Landlord entered into a written agreement for the rent to increase to \$1,000.00 per month.

I find that the Arbitrator at the previous hearing did not void the written agreement for the agreed upon rent increase. The Arbitrator voided an illegal rent increase issued by the previous landlord.

I find that the Tenant’s rent has not increased in the past 12 months and that the Landlord issued a Notice of Rent Increase giving the Tenant more than three months before the agreed upon rent increase became effective.

I have considered that the Tenant now regrets agreeing to the rent increase, as she states she has since gained more information about rent increases. I find that the Tenant was not under duress when she signed the agreement with the Landlord, and I find that the agreement is not unconscionable. While I accept that the Tenant has remorse, I find the agreed upon rent increase to be binding and enforceable.

I find that the Landlord has taken proper steps to implement the agreed upon rent increase and I find that the Tenant's rent is now \$1,000.00 per month effective December 1, 2021.

### Repair Order

I find that there is insufficient evidence from the Tenant to establish that an emergency repair or regular repair is required in the bathroom shower. The Tenant did not provide any documentary evidence showing the bathroom or establishing that the shower does not meet with health, safety and housing standards required by law, or that it makes the rental unit suitable for occupation.

The Tenant's request for the shower to be repaired/ renovated is dismissed.

With respect to the ventilation fan, I find that the Landlord must repair or replace the bathroom ventilation fan. I find that it is not reasonable to now require the Tenant to open the window when she is using the bathroom/ shower.

I order the Landlord to complete the repair or replacement of the bathroom ventilation fan within 30 days of the date of this decision. If the Landlord fails to have the ventilation fan repaired or replaced beyond January 31, 2022, the Tenant is at liberty to apply for compensation.

### Compensation and order for the Landlord to Comply with the Act.

I find that there is insufficient evidence from the Tenant that the Landlord has breached the Act by taking egregious actions against her with regard to the tenancy. The Landlord issued the Tenant a notice of rent increase based on an agreed upon rent increase, and the Landlord also has a right under the Act to issue a One Month Notice to End Tenancy for Cause for repeated late payment of rent.

The Tenant's request to recover \$150.00 for medication costs and an order for the Landlord to comply with the Act is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make

application for dispute resolution. I authorize the Tenants to deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application to dispute an agreed upon rent increase is not successful and is dismissed. The Tenant's request for a repair in the bathroom was partially successful. I order the Landlord to complete the repair or replacement of the bathroom ventilation fan within 30 days of the date of this decision.

The remainder of the Tenant's application to recover medication costs and for an order for the Landlord to comply with the Act was not successful and is dismissed.

The Tenant is awarded \$100.00 for the cost of the filing fee. I authorize the Tenant to deduct the amount of \$100.00 from one (1) future rent payment.

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: December 29, 2021

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Residential Tenancy Branch