



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, CNR, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated December 2, 2021 ("10 Day Notice"); to suspend or restrict the Landlord's right to enter; for an order directing the landlord to comply with the Act, regulation, or tenancy agreement, and to recover the \$100.00 cost of their Application filing fee. However, early in the hearing, the Tenant said that the Tenants withdrew their claims to cancel the 10 Day Notice and to suspend or restrict the Landlord's right to enter. As such, we reviewed the Tenants' other two claims in this proceeding.

The Tenant, R.M., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. Two witnesses, one for the Tenants, D.P., and one for the Landlord, T.P., were also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenants provided their email address in the Application, and confirmed it in the

hearing. The Landlord provided his email address in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Should the Landlord be Ordered to comply with the Act or tenancy agreement, and if so, how?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on January 1, 2015, with a (current) monthly rent of \$1,446.03, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$600.00, and a \$600.00 pet damage deposit. The Landlord confirmed that he still holds these deposits in full.

The Tenants' remaining claim is for the Landlord to comply with the Act or tenancy agreement. The Tenant said they seek to reverse and be reimbursed for an illegal rent increase in 2020. They request the return of the extra rent they paid in this period, which the Tenant said amounts to \$916.81, and which is based on an approximate increase of \$36.65 per month.

The Landlord said he issued a legal rent increase before the government froze rent increases in 2020. He said:

On March 18, 2020, the BC government froze rent increases effective March 30, 2020. After that date, any rent increases were null. I issued the notice of rent increase on October 25, 2019. I called the RTB and they said this increase came in before the freeze on rent. The notice of rent increase took effect on March 1, 2020. I used the percentage allowed by the Ministry and the Branch's calculator the agency gave me.

On the RTB website, it states that the allowable rent increase for 2020, prior to the Ministerial Order coming into effect, was 2.6%. The Parties agreed that the Tenants' rent prior to this rent increase was \$1,409.38. The allowable monthly increase, is therefore, \$36.64, which is what the Parties agreed that the Landlord imposed, as of March 1, 2020.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

On March 30, 2020, the B.C. Provincial Government issued a media release indicating that the *Emergency Program Act*, Ministerial Order No. M089 came into force and includes section 6, which addresses rent increases for the relevant time period.

As an Arbitrator with delegated authority under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, I am obligated to make my decisions according to the *Act(s)* and Regulations, as they read on the date of the hearing.

Section 6 of Ministerial Order M089 ("Ministerial Order") states:

#### **Rent increases – Residential Tenancy Act**

- 6** (1) Subject to subsection (2), if a landlord
- (a) gave a notice of rent increase under the Residential Tenancy Act before the date of this order and the effective date of the rent increase is after the date of this order, or
  - (b) gives a notice of rent increase under the Residential Tenancy Act during the period this order is in effect, the rent increase does not take effect during the period this order is in effect despite the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement.
- (2) Subsection (1) of this section does not apply to a rent increase that is (a) for one or more additional occupants, and (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) of the Residential Tenancy Act.
- (3) If a landlord collects a rent increase that does not comply with

this section, the tenant may deduct the increase from rent or otherwise recover the increase.

In the evidence before me, I find that the Landlord issued the notice of rent increase before the *Emergency Program Act* came into force, and further, the increase took effect before it came into force. As such, I find that the Ministerial Order and the *Emergency Program Act* do not apply to this rent increase, and therefore, I find that I prefer the Landlord's version of events in this regard, over that of the Tenants.

Accordingly, and pursuant to section 62 of the Act, I dismiss the Tenants' Application wholly, as I find they did not provide sufficient evidence to prove on a balance of probabilities that the rent increase was illegal. I find that the rent increase in question was legal and that the Tenants are not eligible for any reimbursement in this regard.

### Conclusion

The Tenants' Application is unsuccessful, as they failed to provide sufficient evidence to prove that the Landlord's rent increase was illegal. Rather, the Landlord established that the rent increase he imposed was compliant with the law at the time it was issued. Therefore, the Landlord's rent increase is valid and legal, and will not be deleted.

Given the Tenants' lack of success in this matter, I decline to award recovery of the \$100.00 Application filing fee. This claim is dismissed without leave to reapply.

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: March 23, 2022

---

Residential Tenancy Branch