



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC, OLC, DRI, LRE, FFT

### Introduction:

This hearing was convened to consider the Tenants' Application for Dispute Resolution in which the Tenants applied to recover the fee for filing this Application for Dispute Resolution, for an Order suspending or setting limits on the Landlord's right to enter the rental unit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, which directly relates to their application for an Order suspending or setting limits on the Landlord's right to enter the rental unit. The Tenants amended the Application for Dispute Resolution to include an application to cancel a One Month Notice to End Tenancy for Cause and to dispute a rent increase.

The female Tenant stated that the Tenants have moved out of the rental unit; that they no longer require an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and that they no longer wish to pursue their application to cancel a One Month Notice to End Tenancy for Cause. I therefore find that the application for an Order suspending or setting limits on the Landlord's right to enter the rental unit, for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement, and the application to cancel a One Month Notice to End Tenancy for Cause have been withdrawn.

The female Tenant stated that on March 03, 2022 the Dispute Resolution Package, the Amendments, and evidence submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Has there been a rent increase that does not comply with the *Act*?

Background and Evidence:

The Landlord and the Tenant agree that:

- When this tenancy began the monthly rent was \$1,200.00;
- Rent was due by the first day of each month;
- The Landlord asked the Tenants to increase the rent by \$200.00, effective January 01, 2022;
- The Tenants negotiated with the Landlord and agreed to pay additional rent of \$150.00, effective January 01, 2022;
- There was no written agreement or written notice to increase the rent;
- The Tenants paid rent of \$1,350.00 for January and February of 2022;
- The Tenants paid \$870.00 in rent for March of 2022;
- The Landlord verbally told the Tenants they must vacate the unit by March 15, 2022;
- Neither party gave written notice to end the tenancy; and
- The rental unit was vacated on March 15, 2022.

Analysis:

On the basis of the undisputed evidence, I find that when this tenancy began the Tenants agreed to pay rent of \$1,200.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the rental unit was vacated on March 15, 2022 and that neither party gave written notice to end the tenancy.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with sections 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. As neither party gave written notice to end this tenancy, I find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that a fixed term tenancy agreement required the Tenants to vacate the unit on March 15, 2022, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended, pursuant to section 44(1)(d) of the *Act*, when the Tenants vacated the rental unit on March 15, 2022.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

On the basis of the undisputed evidence, I find that the rent was increased from \$1,200.00 to \$1,350.00, effective January 01, 2022 and that there was no written agreement regarding the rent increase.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase up to the amount calculated in accordance with the regulations. The allowable rent increase for 2022 is 1.5%. As the rent increase imposed in January of 2022 was much greater than 1.5%, I find that the Landlord did not have the right to increase the rent by \$150.00 on January 01, 2022, pursuant to section 43(1)(a) of the *Act*.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase up to the amount ordered by the director on an application under section 43(3) of the *Act*. As there is no evidence that the director authorized a rent increase of \$150.00, I find that the Landlord did not have the right to increase the rent by \$150.00 on January 01, 2022,

pursuant to section 43(1)(b) of the *Act*.

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase up to the amount agreed to by the tenant in writing. As the Tenants did not agree, in writing, to increase the rent by \$150.00, I find that the Landlord did not have the right to increase the rent by \$150.00 on January 01, 2022, pursuant to section 43(1)(c) of the *Act*.

As the Landlord did not have the right to collect a rent increase of \$150.00 in January of 2022 and February of 2022, I find that the Tenants have the right to recover those overpayments, pursuant to section 43(5) of the *Act*, in the amount of \$300.00.

As this tenancy ended on March 15, 2022, pursuant to section 44(1)(d) of the *Act*, and rent of \$1,200.00 was due on March 01, 2022, I find that the Tenants were obligated to pay rent of \$1,200.00 on March 01, 2022 even though they opted to move out of the unit prior to the end of the month. As the Tenants only paid \$850.00 in rent for March of 2022, I find that the rent overpayment of \$300.00 should be applied to the unpaid rent from March of 2022, leaving rent of \$50.00 still due for that month.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of \$100.00 in compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: March 28, 2022

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Residential Tenancy Branch