



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDCT, RR, PSF, DRI

### Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- compensation for a monetary loss or other money owed;
- a reduction in monthly rent;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act; and
- to dispute a rent increase that is above the amount allowed by law.

The tenant, the landlord, and the landlord's agent/accountant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure. All parties affirmed they were not recording the hearing.

The landlord confirmed receipt of the tenant's application and both parties confirmed not providing documentary evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

The tenant indicated several matters of dispute on this application. I informed the tenant that it would not be possible to proceed on all matters listed in this hearing. The tenant said that he was interested only in considering the matter of the rent increase.

As a result, the other issues in the tenant's application were withdrawn.

#### Issue(s) to be Decided

Was a tenancy formed between the applicant and the respondent?

If so, has the tenant provided sufficient evidence in dispute of the rent increase?

#### Background and Evidence

The tenant submitted that he moved into the single room occupancy unit in July 2013, with an initial monthly rent of \$600, which increased to \$650 during the tenancy, and then the monthly rent was increased to \$700.

The tenant submitted that the landlord increased the monthly rent from \$700 to \$800, which the tenant submitted was beyond the allowable amount.

In response, the landlord said he was not looking to dispute the tenant's evidence, application, or statements.

The landlord said that they were treating the tenant's occupancy of the hotel room as a whole, regarding the entire hotel. The landlord did not specifically dispute there was a tenancy in place, but pointed out that the rental unit was a hotel room and not a single room occupancy.

The landlord said that they were not certain at the beginning of this relationship how long the tenant would stay, which caused another uncertainty as to whether a tenancy formed.

The landlord confirmed his awareness that under the Act, the monthly rent could only increase by 1.5% in the year 2022. The landlord said they were just not clear the Act applied to this situation.

The landlord's agent said that the tenant paid the amount of \$700 for January and February 2022, and tried to pay for the month of March 2022; however, according to the agent, they did not accept the tenant's rent payment in order to wait the outcome of this dispute resolution hearing.

The parties agreed that the tenant did not pay a security deposit.

### Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, policy, on the balance of probabilities.

The Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

The undisputed evidence was the applicant entered into a verbal agreement to occupy the subject property as of July 2013, in exchange for the payment of \$600 per month.

In determining whether there is a tenancy, Tenancy Policy Guideline 9 provides information. Under a tenancy agreement, a tenant is granted exclusive possession of the rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

Given that the tenant has had exclusive possession of the rental unit since July 2013, on a month-to-month basis and pays a fixed amount as monthly rent, I find that the applicant is a tenant, that the respondent is a landlord, as defined by the Act, and, as a result, pursuant to section 62(3), I order that a tenancy was created between the parties. The current terms are that the monthly rent is \$700 and that the tenancy is on a month-to-month basis.

There was testimony from both parties that the tenant paid rent on a weekly basis, and as a result, I find no consensus of the exact day the monthly rent is due. If this ever becomes an issue, the parties are at liberty to seek further dispute resolution in order to make that determination, based upon the evidence.

The remaining issue in this dispute is the validity of the rent increase.

The evidence showed the tenant was informed that the monthly rent would increase from \$700 to \$800 per month, but this increase was not in written form. I find this was due to the landlord's uncertainty if the tenant's occupancy of the unit was under the jurisdiction of the Act.

Now that I have determined that a tenancy was formed between the parties, I find that any future rent increase must meet the requirements of section Part 3 of the Act.

The landlord is aware that any rent increase must be in compliance with the requirements of the Act, and is aware that the rent increase allowed for 2022 is 1.5%.

As a result of the above, I find it was unnecessary to cancel the verbal notice of a rent increase, and, pursuant to section 62(3), I **order** that the tenant's monthly rent is set at \$700 until it is legally increased under the Act,

### Conclusion

The issues unrelated to the tenant's request to dispute a rent increase were withdrawn at the hearing.

I ordered that a tenancy formed between the parties.

I ordered that the tenant's current monthly rent is set at \$700.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 05, 2022

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Residential Tenancy Branch