



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1044971 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **RP, DRI, FFT**

### **Introduction**

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

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant MG attended (the "tenant"), assisted by a family member and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenant testified that they served the landlord with the notice of hearing and evidence by registered mail sent on or about March 3, 2022. The tenants submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenants' materials on March 8, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Should the landlord be ordered to make repairs?

Are the tenants entitled to an order regarding the disputed rent increase?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant gave undisputed evidence regarding the following facts. This tenancy originally began on April 15, 2016 with a 1-year fixed term tenancy agreement. The monthly rent was \$2,200.00 payable on the 15<sup>th</sup> of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant was presented with a new 1-year fixed-term tenancy agreement in 2017 setting the monthly rent at \$2,400.00. Feeling unable to dispute the higher monthly rent the tenant signed the new agreement and paid rent in that amount for the following year. The tenant was presented with successive 1-year fixed term tenancy agreements in 2018 and 2019 providing a rent of \$2,500.00.

The tenant testified that due to the ongoing Covid19 pandemic in 2020 and the landlord's stated concern about the property being found to be in violation of municipal bylaws, no further tenancy agreements were provided by the landlord. The tenancy continued on a month-to-month basis from May 1, 2020 onwards with a monthly rent of \$2,500.00.

The tenant gave evidence that the rental unit is in need of various repairs including faulty electrical wiring which causes frequent disruptions in using appliances, plumbing issues causing leaks, water ingress and flooding, repair of the outer membrane as the rental property leaks when it rains, and most pressingly that their refrigerator unit is malfunctioning causing food to freeze. The landlord testified that they have made multiple requests to the landlord but they have failed to take any action and have simply placed the responsibility for repairs on the tenants.

## Analysis

Residential Tenancy Rule of Procedure 6.6 sets out the standard of proof and onus of proof providing that the applicant must establish their claim on a balance of probabilities.

Section 32(1) provides that a landlord is responsible to repair and maintain rental property and provides:

**32** (1)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.

In the present case, while the tenants have provided little documentary evidence in support of their claim for repairs, I find they gave cogent, detailed testimony outlining the issues with the rental unit. I find the testimony of the tenant and their family member to rise above mere speculation or complaints and be sufficient to establish that there are issues that must be corrected to comply with health, safety and housing standards.

While the tenant is not an expert in electrical systems, plumbing or property repairs I find their observations from residing in the rental unit to carry great weight in identifying obvious deficiencies. I find that some of the issues they have mentioned such as a fence on the property to be vague and not sufficient to determine that it is an issue which should be the subject of repairs. I find their testimony about foods becoming inedible due to their refrigerator being unable to maintain a reasonable temperature to be persuasive.

Based on the undisputed evidence of the tenants I am satisfied that the residential property is in need of repairs, maintenance and work to bring to a state of reasonable repair complying with health, safety and housing standards. The tenant was unable to identify what specific repairs would be appropriate or sufficient to deal with the current deficiencies.

Accordingly, I find it appropriate to order the following:

1. Repair or Replace the refrigerator unit in the rental unit.
2. Address the issue of the electrical system for the rental unit by having a licensed professional inspect and recommend necessary repairs or work.
3. Address the issues of the plumbing system for the rental unit by having a licensed professional inspect and make recommendations for repairs and work.

I order that the landlord complete this work within 8 weeks following the date of this decision.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 43 of the *Act* provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, as ordered by the director upon an application by the landlord, or agreed to by the tenant in writing.

The *Act* further provides in section 5 that parties may not avoid or contract out of the *Act*, and any attempts to do so are of no effect.

The tenants submit that each of the successive tenancy agreement issued by the landlord were a means of raising the monthly rent beyond that which was permitted under the *Act*, and that they have therefore incurred losses due to the landlord's violation. I find the tenant's submissions to have merit.

Each of the tenancy agreements submitted into evidence contains a vacate clause stating that the tenant must exit the rental unit at the end of the fixed-term.

Furthermore, despite each of the successive agreement prepared by the landlord containing the standard clause that the security deposit would be returned at the end of the tenancy, the tenant gave undisputed evidence that they only paid a security deposit

of \$1,100.00 once when moving in and that amount has simply been held by the landlord and carried over to each new successive agreement.

I find that the conduct of the parties indicates that this was not a series of separate fixed-term tenancies but a single continuing tenancy in which the landlord required the tenants to enter into a succession of tenancy agreements if the tenants wished to continue to reside in the rental unit. The fixed term provision was for the sole benefit of the landlord. The landlord relied upon the fixed term as the basis for increasing the rent more frequently and above the amount permitted by the *Act* and regulation.

I accept the evidence of the tenant that while they signed the successive fixed-term tenancy agreements that were presented to them by the landlord, this was not an indication of a meeting of minds but situations where the unequal bargaining positions led to the tenants acquiescing to the demands of the landlord.

The evidence before me is that the rent went from the initial amount of \$2,200.00 to \$2,400.00 in 2017, an increase of 9.1% when the permitted amount of the increase was 3.7% and from \$2,400.00 to \$2,500 in 2018, which was an increase of 4.2% when the permitted amount was 4.0%. In any event the landlord has never issued a Notice of Rent Increase and has used these successive fixed-term tenancy agreements to increase the rent.

The *Residential Tenancy Act* provides that parties may not avoid or contract out of the provisions of the *Act* or Regulation. It is my view that the landlord's use of the fixed term provision of the tenancy agreement as it has done here, and the use of the provision to avoid or defeat the mandatory rent increase provisions of the legislation does amount to an attempt to contract out of the legislation. I make this finding, not based on the singular employment of a fixed term tenancy agreement, but based on its repetitious use over a short period of time and upon its use to increase the rent beyond the amount permitted by Regulation. The *Residential Tenancy Act* does not prohibit a fixed term tenancy agreement, but to condone the use of serial fixed term tenancies would amount to the nullification of important provisions of the legislation intended to protect tenants. I further find that the use of a fixed term tenancy in this manner is unconscionable within the meaning of the Regulation. I find that there is an inequality of bargaining power between the tenants and the landlords in circumstances where the tenants had no alternative but to accept the proffered agreement or find a new home on short notice in difficult circumstances.

I find the tenants' entering into these successive fixed-term tenancies and paying the amount of the rent demanded is not evidence of a true meeting of minds but borne out of the unequal bargaining powers of the parties.

I accept the undisputed evidence that the landlord has never issued a valid Notice of Rent Increase pursuant to the Act or regulations. I therefore find that any amount of rent paid over the initial amount of \$2,200.00 is an overpayment which the tenants are entitled to recover. I calculate the overpayment to the date of the hearing to be \$17,400.00 and accordingly issue a monetary award in that amount.

As the tenants were successful in their application they are entitled to recover the filing fee from the landlord.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$17,500.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is ordered to make the following repairs within 8 weeks of the date of this decision:

1. Repair or Replace the refrigerator unit in the rental unit.
2. Address the issue of the electrical system for the rental unit by having a licensed professional inspect and recommend necessary repairs or work.
3. Address the issues of the plumbing system for the rental unit by having a licensed professional inspect and make recommendations for repairs and work.

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: June 6, 2022

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Residential Tenancy Branch