



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, PSF, OLC, LRE, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants MA (the tenant) and landlords DK and KL attended the hearing. The tenant represented tenants AM and DM. The tenant was assisted by advocate LH (the advocate) and interpreter EL. The landlords were assisted by advocate VK (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that

each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing the tenant advised that she is only seeking a monetary order for compensation and an authorization to recover the filing fee.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the tenants' application to withdraw their claims, except for a monetary order for compensation and an authorization to recover the filing fee.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order for compensation?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in August 2012 and ended on May 31, 2022. Monthly rent of \$1,260.00, was due on the first day of the month. The landlord collected and returned a security deposit.

The tenancy agreement dated July 27, 2012 was submitted into evidence:

If \$850.00 is not paid in full on the 1st of each month, or other reason, for the landlord would like the tenant to move out that unit above.

The tenant submitted into evidence addendums to the tenancy agreement that increased the amount of rent: November 01, 2015 (\$930.00), August 01, 2016 (\$1,000.00), August 01, 2017 (\$1,050.00), August 01, 2018 (\$1,150.00), August 01,

2019 (\$1,200.00) and May 01, 2021 (\$1,260.00). Both parties signed the tenancy agreement and the addendums.

Both parties agreed the landlord did not serve a notice of rent increase and that they did not understand the residential tenancy regulation regarding rent increase. The landlord stated that both parties have limited English.

The tenant testified that she learned about the rent increase rules in 2019. The tenant affirmed she was afraid to be evicted if she did not agree to the rent increases. The tenant has a child with special needs, and she did not have the financial resources to relocate.

The tenant received the notice of rent increase on April 01, 2022: "House rent increase notice: From May 01, 2022 on, the rent will be \$1,360.00". The tenant served the April 22, 2022 letter (the letter) to the landlord. The landlord confirmed receipt of the letter on April 22, 2022:

On April 01, 2022, I received your rent increase notice in person at the moment I paid you my rent for April. You notified me that starting the month of May 01, 2022, my rent will increase by \$100.00 and my deposit will increase by \$50.00. You provided me with an illegal rent increase notice. You have not complied with the Residential Tenancy Act (RTA) and I do not consent to this rent increase. I will continue to pay my current monthly rent of \$1260 until my rent is legally raised in accordance with the RTA.

Both parties agreed the landlord served and the tenants received a two month notice to end tenancy for landlord's use of the rental unit (the Notice) on April 29, 2022.

A copy of the Notice was provided. The Notice is dated April 28, 2022 and the effective date is June 30, 2022. It states: "the rental unit will be occupied by the landlord or the landlord's close family – the landlord or the landlord's spouse".

The tenant did not pay rent on May 01, 2022 and moved out before the Notice's effective date.

The tenant said she paid, and the landlord confirmed receipt, of monthly rent in the following amounts:

Period	Monthly Amount \$
August 01, 2012 to October 31, 2015 (39 months)	850.00

November 01, 2015 to July 31, 2016 (9 months)	930.00
August 01, 2016 to July 31, 2017 (12 months)	1,000.00
August 01, 2017 to July 31, 2018 (12 months)	1,050.00
August 01, 2018 to July 31, 2019 (12 months)	1,150.00
August 01, 2019 to April 30, 2021 (21 months)	1,200.00
May 01, 2021 to April 30, 2022 (12 months)	1,260.00

The landlord affirmed the parties agreed to increase rent by \$80.00 effective on November 01, 2015 because a new occupant moved to the rental unit. The tenant stated the landlord asked to increase rent because of the new occupant, but the tenant did not agree to the rent increase.

The advocate testified the rental agreement does not limit the number of occupants and does not authorize the landlord to change an occupant fee.

The tenant said the rental increases were above the maximum amount of rent increase allowed by the Act. The tenant is claiming a monetary order in the amount of \$8,747.51.

The tenant submitted a monetary order worksheet into evidence.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that

compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The testimony of the parties regarding the November 01, 2015 rent increase was conflicting. The landlords claim, as a defence argument, that the parties agreed to the November 01, 2015 rent increase because an extra occupant moved to the rental unit. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlord) has not met the burden on a balance of probabilities and the claim fails.

The landlords did not provide documentary evidence to support their claim that the tenant agreed to increase rent on November 01, 2015 because of an extra occupant. I find the landlords failed to prove, on a balance of probabilities, that the tenants agreed to the November 01, 2015 rent increase because of an extra occupant.

Sections 41, 42 and 43 of the Act state:

41 A landlord must not increase rent except in accordance with this Part.

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(1)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)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.

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(1)A landlord may impose a rent increase only up to the amount

(a)calculated in accordance with the regulations,

(b)ordered by the director on an application under subsection (3), or

(c)agreed to by the tenant in writing.

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(emphasis added)

Based on the undisputed testimony, the residential tenancy agreement and the addendums submitted into evidence, I find the landlords were subject to section 43(1) of the Act.

Residential Tenancy Branch Policy Guideline 37 states:

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing.

The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

[...]

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

(emphasis added)

The addendums do not acknowledge that the parties agreed to rent increases that are greater than the maximum allowable rent increase.

Based on the undisputed testimony, I find the landlord did not serve a notice of rent increase and increased rent by residential tenancy addendums, thus breaching section 42(3) of the Act.

The Residential Tenancy Branch provides information to landlords and tenants regarding the Act and the parties have the obligation to follow Act.

The maximum allowable rent increase for residential tenancies, in accordance with section 22 of the Regulation, was:

Year	Allowable Rent Increase %	Rent increased %
2015	2.5%	9.4%
2016	2.9%	7.5%
2017	3.7%	5%
2018	4%	9.5%
2019	2.5%	4.3%
2021	0	5%

Thus, all the rent increases during the tenancy were not in accordance with sections 42(3) and Regulation 22.

Based on the undisputed testimony, I find the tenant overpaid rent:

Period	Amount paid \$	Correct amount \$	Monthly Difference \$	Amount overpaid \$
November 01, 2015 to July 31, 2016 (9 months)	930.00	850.00	80.00	720.00
August 01, 2016 to July 31, 2017 (12 months)	1,000.00	850.00	150.00	1,800.00
August 01, 2017 to July 31, 2018 (12 months)	1,050.00	850.00	200.00	2,400.00
August 01, 2018 to July 31, 2019 (12 months)	1,150.00	850.00	300.00	3,600.00
August 01, 2019 to April 30, 2021 (21 months)	1,200.00	850.00	350.00	7,350.00
May 01, 2021 to April 30, 2022 (12 months)	1,260.00	850.00	410.00	4,920.00
Total				20,790.00

Section 43(5) of the Act states: "If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase."

I accept the tenant's undisputed testimony that the tenants were not aware of the residential tenancy regulation regarding rent increase and that the tenants were afraid to be evicted if the tenant did not agree to the rent increases.

As the tenants submitted a claim for \$8,747.51, I award the tenants compensation in the amount of \$8,747.51.

The tenants were successful in this application. Pursuant to section 72 of the Act, I authorize the tenants to recover the \$100.00 filing fee.

In summary, the tenants are entitled to a monetary award in the amount of \$8,847.51.

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the tenants a monetary order in the amount of \$8,847.51.

The tenants are provided with this order in the above terms and the landlords must be served with this order. Should the landlords 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.

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: July 27, 2022

Residential Tenancy Branch