



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, DRI, FFT

Introduction

On June 6, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking to dispute a rent increase pursuant to Section 41 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing and evidence package to the Landlord by registered mail on or around June 20, 2022, and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been duly served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that she did not submit any documentary evidence for consideration on this file.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenant's Application with respect to disputing a notice to end tenancy, and the other claims were dismissed with leave to reapply. However, as noted below, the Tenant already gave up vacant possession of the rental unit, so it was unnecessary to hear submissions with respect to an Order of Possession. As such, the other issues were considered.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Was a rent increase implemented contrary to the *Act*?
- Is the Tenant entitled to an Order that the Landlord comply with the *Act*?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on March 1, 2021, and that the tenancy ended on or around June 30, 2022. Rent was established on the tenancy agreement at \$600.00 per month and was due on the first day of each month. Neither a security deposit nor a pet damage deposit was paid. A copy of the tenancy agreement, that was signed by the Landlord, was submitted as documentary evidence for consideration.

The Landlord advised that the Tenant was served a Two Month Notice to End Tenancy

for Landlord's Use of Property (the "Notice") by hand on April 28, 2022. The reason that was checked off on the Notice was because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The effective end date of the tenancy was noted on the Notice as June 30, 2022.

The Tenant confirmed receiving this Notice and that she mistakenly applied to dispute the wrong notice to end tenancy on her Application. A copy of this Notice was submitted as documentary evidence. She stated that she gave up vacant possession of the rental unit based on this Notice.

As noted above, as the tenancy has already ended, hearing submissions regarding a dispute of the Notice was a moot point. To make the best use of the remaining hearing time, I turned my mind to the next pressing issue of the Tenant's dispute of an illegal rent increase.

The Tenant advised that the Landlord texted her on November 18, 2021, to inform her that rent would be increased to \$1,100.00 per month and that this would be due starting January 1, 2022. She stated that she paid \$1,100.00 for each month of January, February, March, April, and May 2022, and then withheld this amount from June 2022 rent due to being served the Notice. She testified that she was never served with a Notice of Rent Increase form by the Landlord, nor was she given three months' notice of a rent increase. In addition, she stated that she never agreed in writing to a rent increase.

She submitted that an acquaintance informed her in December 2021 that this would be considered an illegal rent increase, and that she contacted the Residential Tenancy Branch to confirm that this was a breach of the *Act*. Despite having this information however, she elected to pay the rent increase anyways for "fear" of being evicted.

The Landlord advised that the owner of the property informed her that rent needed to be increased. As such, she texted the Tenant in October 2021 of this, to which the Tenant agreed. She then confirmed that she texted the Tenant on November 18, 2021, to inform her that rent would be increased to \$1,100.00 per month, effective for January 1, 2022. She confirmed that the Tenant paid \$1,100.00 for each month of January, February, March, April, and May 2022, and then withheld this amount from June 2022 rent due to being served the Notice. As well, she stated that the Tenant never

complained about the rent increase and only discovered that it may have been an illegal rent increase after June 3, 2022.

The Landlord testified that she was not even aware that she could not increase the rent in the manner that she did until she received the Tenant's Notice of Hearing package. She stated that it was not really her intention to enter into a tenancy and she acknowledged that she did not provide the Tenant with three months' notice for a rent increase while using the approved Notice of Rent Increase form. It was evident that the Landlord had no knowledge of her rights and responsibilities under the *Act*.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if they comply with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenant's rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenant a notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenant in writing.

In addition, I find it important to note that Policy Guideline # 37 outlines the following with respect to allowable rent increases:

A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must be in writing, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

Furthermore, the following excerpts from this Policy Guideline also apply to this circumstance:

Notice Requirement

The landlord must give the tenant a completed Notice of Rent Increase form at least three months before the effective date of the rent increase. This applies to annual rent increases, agreed rent increases and additional rent increases. The approved form must be used.

AGREED RENT INCREASE A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must be in writing, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant.

When reviewing this matter, while the Landlord claimed that the Tenant agreed to this excessive rent increase, the consistent and undisputed evidence is that the Landlord increased the rent within 12 months of the tenancy starting, which is contrary to the *Act*. Furthermore, there is no dispute that the Landlord did not initiate a written agreement for a rent increase that was greater than the maximum allowable annual rent increase, nor was there any signed agreement of this by the Tenant. In addition, the Landlord did not give the Tenant three full months' notice of the rent increase while utilizing the approved Notice of Rent Increase form to do so. Ultimately, I am satisfied that the Landlord breached the applicable Sections of the *Act* by implementing an illegal rent increase. Therefore, I find that the rent from January 2022 to June 2022 should have remained at \$600.00 per month.

However, with respect to the Tenant's claim of loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As well, 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. When establishing

if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

While it is entirely evident that the Landlord implemented an illegal rent increase, I find it important to note that the Tenant acknowledged that she was informed by an acquaintance that such an act by the Landlord was not valid. Furthermore, she confirmed that she then contacted the Residential Tenancy Branch in December 2021 and was advised that this information was in fact correct. Yet, despite this information, the Tenant still paid this illegal rent increase as of January 1, 2022.

While she claimed that she was in “fear” of being evicted, the Landlord could not have ended the tenancy based on an illegal rent increase, and the Tenant could have simply disputed any such notice to end her tenancy for unpaid rent in excess of \$600.00 per month. As such, I reject the Tenant’s reasoning for not addressing this issue with the Landlord when she was first made aware that this was a problem in December 2021. Consequently, I am not satisfied that the Tenant adequately, or acted reasonably, to mitigate/minimize this loss.

However, as I am satisfied that both parties are at fault here, I find that both parties should be held partially liable. Given that an extra \$500.00 was paid for the months of January, February, March, April, and May 2022, an additional \$2,500.00 was paid in total by the Tenant. As I am satisfied that both parties were culpable for this issue, based on my authority under Section 67 of the *Act*, I find I find it appropriate to grant the Tenant a monetary award in the amount of **\$1,250.00** to remedy this matter.

As I have determined that rent remained at \$600.00 per month, and as the Tenant withheld any payment for rent as per the one month’s compensation clause due to the Notice, I am satisfied that she appropriately withheld \$600.00 from June 2022 rent.

As the Tenant was partially successful in her claims, I find that the Tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Illegal rent increase	\$1,250.00
Recovery of filing fee	\$50.00
TOTAL MONETARY AWARD	\$1,300.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,300.00** in the above terms, and 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.

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: October 22, 2022

Residential Tenancy Branch