



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNC, DRI**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- cancellation of a rent increase pursuant to section 41
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by MG with her translator PH, while the tenant was represented by tenant AG and her translator EG. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord acknowledged receipt of the dispute notice filed July 21, 2022, amendment filed September 22, 2022 and evidence package which were served by registered mail sent September 22, 2022. I find that service is met in accordance with sections 88 and 89 of the Act.

Preliminary Issue

The tenant confirmed at the outset of the hearing that they no longer occupied the rental property and did not wish to return. Therefore, the tenant’s application disputing the One Month Notice is dismissed. The hearing proceeded solely on the issue of whether a

rent increase imposed upon the tenant was lawful and whether the tenant is entitled to a return of the filing fee.

Issue(s) to be Decided

1. Is the rent increase imposed by the landlord lawful? Is the tenant entitled to a monetary order compensating them for an unlawful rent increase?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced February 1, 2019 on a month to month basis. Rent was \$1,850.00 per month and the security deposit of \$1,000.00 has been returned to the tenant as they, moved out September 30, 2022 and no longer occupy the residence..

The tenant stated that they received a rent increase in January 2020 of \$253.00 per month. The notice of rent increase was verbal, was given on January 1, 2020 and was effective immediately. Rent was \$2,103.00 as of January 1, 2020. A further rent increase was imposed on January 1, 2022 of \$297.00 per month, bringing the monthly rent to \$2,400.00 per month as of January 1, 2022. The tenant did not receive written notice of either rent increase. The tenant provided handwritten records of the rent due and paid which appear to be rent receipts. The receipts are signed by the landlord.

The landlord does not dispute either of these rent increases, but states that the tenant agreed to them and they were necessary because the tenant was renting out space in the rental property to other persons. The landlord states that the January 1, 2020 rent increase was \$53.00 for a rent increase, and the other \$200.00 was due to extra tenants occupying the residence.

The tenant is seeking compensation for an illegal rent increase of \$5,140.00 from January 2020 to December 2021 and \$2,123.00 from January 2022 to September 2022 for a total of \$7,533.00. The tenant has provided handwritten notes showing the calculations used to arrive at that amount. In her calculations she took into account the lawful rent increase and used that amount as the basis upon which to calculate her overpayment.

Analysis

The legislation outlines the way in which a landlord may increase a tenant's rent:

42 (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.

The landlord did not provide a written notice of rent increase in an approved form 3 months before the effective date of the increase. The tenant was advised verbally that the rent increase imposed was effective immediately.

Further, section 43 of the Act defines how much of a rent increase can be imposed:

43 (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.

(5)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.

The landlord therefore may not increase rent unless they do so in accordance with the Act. I find that the rent increases imposed by the landlord far exceeded the allowable rent increases under the Act. The landlord was entitled on both occasions to increase rent only by the formula contained within the Residential Tenancy Regulations ("Regulations") referred to in the Act. Additionally, I find that the verbal and immediate

notice of rent increase by the landlord was not in accordance with the Act. Upon being notified of a rent increase in January 2020, and in January 2022, those rent increases could not take effect for at least three months. A rent increase in accordance with the Act and Regulations could only be collected starting in April 2020, and again in April 2022.

In her handwritten calculations the tenant demonstrated the amount of rent that she overpaid from January 2020 to September 2022. In her calculations, she did not take into account that under section 42(2) of the Act, a rent increase can only be implemented after three months notice to the tenant. I have recalculated the amounts in accordance with the legislation.

Section 42(2) of the Act requires three months notice to be given for a rent increase to take effect. The tenant was not required to pay any rent increase until April 1, 2020 for the first increase and April 2022 for the second increase. The first rent increase in April 2020 increased the rent to \$1,877.75 per month. The second rent increase resulted in monthly rent of \$1,905.91 per month until September, 2022. I note that the tenant in her calculations counted January 2022 to September 2022 as eight months. The rent receipts showed that she paid rent for September 2022, which is therefore equal to nine months of rent.

January 2020 - March 2020 - $\$253.00 \times 3 = \759.00 overpayment

April 2020 - September 2022 (Rent increase #1) - $\$253.00 - \27.75 (allowable increase) $\times 30 = \$6,757.50$ overpayment

January 2022 – March 2022 - $\$297.00 \times 3 = \891.00 overpayment

April 2022 - September 2022 – $\$297.00 - \28.17 (allowable increase) $\times 6 = \$1,612.98$ overpayment

Overpayment Dates	Overpayment Amounts
January 2020 - March 2020	\$759.00
April 2020 - September 2022	\$6,757.50
January 2022 - March 2022	\$891.00

April 2022 - September 2022	\$1,612.98
Total Overpayment	\$10,020.48

I find the tenant is entitled to compensation in the amount of \$10,020.48. Having been successful, I also find the tenant is entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The tenant is granted a monetary order for \$10,120.48 in compensation and in recovery of the filing fee. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The tenant's application to cancel the 1 Month Notice is withdrawn as the tenancy has ended.

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: November 14, 2022

Residential Tenancy Branch