



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

DRI, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants to dispute a rent increase and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenants stated that on October 17, 2022 the Dispute Resolution Package was sent to the Landlord, via registered mail, at his residence. The Agent for the Tenants cited a tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing. As the documents were served to the Landlord in accordance with the *Act*, the hearing proceeded in the absence of the Landlord.

On June 27, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The Agent for the Tenants stated that this evidence was served to the Landlord, via registered mail, on October 24, 2022. The Agent for the Tenants cited a tracking number that corroborates this statement. I find that these documents have been served in accordance with section 88 of the *Act* and, as such, were accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Has the Landlord imposed a rent increase that does not comply with the *Residential Tenancy Act (Act)*?

Background and Evidence:

The Agent for the Tenants stated that:

- The tenancy began on July 01, 2018;
- The named Respondent purchased the rental unit after the tenancy started;
- When the tenancy began, rent was \$1,300.00 per month;
- On July 11, 2020 the Landlord gave the Tenants an unsigned written notice that the rent would increase to \$1,333.80, effective November 01, 2020;
- On July 19, 2020 the Landlord gave the Tenants a signed written notice that the rent would increase to \$1,333.80, effective November 01, 2020;
- the Tenants paid the rent increase of \$33.80 for the period between November 01, 2020 and May 31, 2022;
- In February of 2022 the Landlord gave the Tenants permission to reduce a rent payment by \$642.20 in compensation for the rent increase of \$33.80 that was paid between November 01, 2020 and May 31, 2022;
- The Tenants reduced their rent payment in June of 2022 by \$642.20 to recover the rent increase that was paid since November 01, 2020;
- On November 25, 2021 the Tenants were served with a signed written notice of rent increase that increased the rent from \$1,333.80 to \$1,353.80. effective January 01, 2022;
- The Tenants have paid rent of \$1,300.00 since May 31, 2022; and
- On October 31, 2022 the Landlord served them with another written notice of rent increase, which increases their rent from \$1,300.00 to \$1,340.92.

Analysis:

Section 41 of the *Act* stipulates that a landlord must not increase rent except in accordance with this *Act*.

Section 42(1) of the *Act* stipulates that 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*.

Sections 42(2) and 42(3) of the *Act* stipulates that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase, in the approved form.

Section 42(4) of the *Act* stipulates that 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.

Section 43(1) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations; ordered by the director on an application under subsection (3); or agreed to by the tenant in writing.

On the basis of the undisputed evidence, I find that on July 19, 2020 the Landlord gave the Tenants a signed written notice that the rent would increase to \$1,333.80, effective November 01, 2020.

In 2020 landlords were permitted to increase the rent by 2.6% for a portion of that year. Ministerial Order No M089 prohibited all rent increases between March 18, 2020 and July 10, 2021.

As the written notice to increase the rent to \$1,333.80 was served to the Tenant after March 18, 2020 and before July 10, 2021 and it proposed to increase the rent on November 01, 2020, I find that the Landlord was prohibited from imposing that rent increase pursuant to Ministerial Order No M089. As such, I find that the Landlord did not have the right to increase the rent from \$1,300.00 to \$1,333.80 on November 01, 2020. The notice of rent increase that was served on July 19, 2020 was, therefore, of no force and effect, and the rent remained at \$1,300.00.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply the *Act*, the tenant may deduct the increase from rent or otherwise recover the increase.

As the Landlord did not have the right to increase the rent on November 01, 2020, I find that the Tenants are entitled to recover all of this rent increase they have paid. As the Tenants paid the rent increase of \$33.60 for 19 months, I find that they were entitled to recover the overpayments of \$642.20.

On the basis of the undisputed evidence, I find that the Tenants withheld \$642.20 in rent that was due for June of 2022. By withholding this rent, I find that the Tenants were properly reimbursed for the rent increase of \$33.60 that was paid between November 01, 2020 and May 31, 2022.

On the basis of the undisputed evidence, I find that on November 25, 2021 the Landlord gave the Tenants a signed written notice that the rent would increase from \$1,333.80 to \$1,353.80, effective January 01, 2022. As the Landlord did not have the right to increase the rent from \$1,300.00 to \$1,333.80 on November 01, 2020, the notice of rent increase the Landlord served on November 25, 2021 was flawed. Rather than declaring that rent at the time of increase was \$1,333.80, the notice of rent increase should have declared that the rent at the time of increase was \$1,300.00.

I find that the notice of rent increase the Landlord served on November 25, 2021 imposed a rent increase of \$53.50, effective January 01, 2022. (From \$1,300.00 to \$1,353.80) The imposed rent increase of \$53.50 is an increase of 4.1%. The allowable rent increase for 2022 is 1.5%. As the imposed increase of \$53.50 exceeds the allowable rent increase for 2022, I find that the Landlord does not have the right to impose the rent increase cited on the notice of rent increase that was served on November 25, 2021. The notice of rent increase that was served on November 25, 2021 was, therefore, of no force and effect, and the rent remained at \$1,300.00.

The Tenants filed this Application for Dispute Resolution prior to the Landlord serving them with a third notice of rent increase on October 31, 2022. The Tenants did not amend this Application for Dispute Resolution to include a claim to dispute the notice of rent increase that was served on October 31, 2022. The Tenants did not submit a copy of the rent increase that was served on October 31, 2022.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that the "claim" is limited to what is stated in the Application for Dispute Resolution. As the Tenants did not properly notify the Landlord that they would be disputing the rent increase cited on the notice of rent increase that was served on October 31, 2022, I am unable to consider that matter at these proceedings.

The Tenants retain the right to file another Application for Dispute Resolution to dispute any rent increases not considered at these proceedings.

I find that it was reasonable in these circumstances to file this Application for Dispute Resolution and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenants do not wish to enforce this monetary Order through the Court, they have the right to reduce a monthly rent payment by \$100.00, pursuant to section 72(2) of the *Act*.

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

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Residential Tenancy Branch