



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, LRE, FFT**

Introduction

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her Translator, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on August 4, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Canada Post website confirms delivery of the NoDRP

package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on August 9, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

Unrelated Claims

The Tenant testified that he vacated the rental unit on August 1, 2022. I advised the parties that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application, the only relevant claims now being his monetary claim and recovery of the application filing fee.

As the Tenant has vacated the rental unit, I dismiss his applications to cancel the 10 Day Notice and to suspend or set conditions on the Landlord's right to enter the rental unit. I will only consider the Tenant's monetary claim and the claim for recovery of the application filing fee at this proceeding.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on March 1, 2019. The fixed term ended on February 28, 2021, then the tenancy continued on a month-to-month basis. Monthly rent was \$1,300.00 payable on the first day of each month. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the Landlord. The tenancy ended on August 1, 2022.

The Tenant testified that at the end of the fixed term, the Landlord told the Tenant that if he wanted to stay, his new rent would be \$1,650.00. He said the Landlord told him if he did not agree, she would have family move into the rental unit and kick him out. The Tenant paid this amount for March, April, and May 2021.

In June 2021 the rent went up again, the Tenant said the original amount was \$1,800.00, then in June 2022, the rent went up to \$1,900.00. The Tenant uploaded signed rent receipts for May and June 2022 for rental payments of \$1,900.00. The Landlord served a 10 Day Notice on the Tenant in July 2022 as he was late paying his rent for the first time. The reason in the 10 Day Notice was that the Tenant owed \$1,900.00 on July 1, 2022.

The Tenant stated the Landlord never served him with a formal rent increase notice. Near the end of his tenancy, he described that the Landlord wanted to increase his rent to \$2,300.00. The Tenant said they argued many times over the rent increases. He said he gave her leeway to fix the issue, but in the end, he said you owe me money, or we go through the process.

The Landlord said the Tenant agreed to the increased rent amounts. She said he would not sign any papers attesting to his agreement. The Landlord said because her mortgage was up for renewal, she needed to increase the rent amount.

After the Tenant received the 10 Day Notice, he applied to dispute the notice and is seeking \$8,250.00 in compensation for the overpayments in rent from March 2021.

Analysis

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.

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.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

Landlords must comply with Part 3 of the Act when wanting to increase rent amounts. Landlords may only increase the rent amount once in a 12-month period by an amount permitted by law. The maximum allowable rent increase amount in 2021 was 0%, and in 2022 was 1.5%. The Landlord increased the Tenant’s rent amount by about 126.9% in 2021, and by about 115.2% in 2022. These two increases are in contravention of the Act.

I find the Landlord breached the rental increase provisions of the Act against the Tenant. The Tenant continued to pay for his need for housing but questioned the equity of the increases. I find the Tenant suffered loss by paying the increased rent amounts and after making inquiries after receiving the 10 Day Notice, he applied for dispute resolution including this claim for compensation for these rent overpayment amounts. Based on the testimony of both parties, I find the Tenant has proven that he paid \$1,650.00 for rent from March to May 2021, \$1,800.00 for rent from June 2021 to May 2022, and \$1,900.00 for rent from June to July 2022. Pursuant to Section 7 of the Act, the Tenant is entitled to a monetary award, and I grant the Tenant **\$8,250.00** which corresponds to the rental overpayment amount for the above time periods.

As the Tenant is successful in his claim, he is entitled to recovery of the **\$100.00** application filing fee. The Tenant is provided a monetary order in the amount of \$8,350.00 with this decision.

For the benefit of the Tenant, he may wish to discuss with an Information Officer at the RTB the options available to him to request the return of his security deposit. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$8,350.00. 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 of British Columbia 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 Act.

Dated: December 09, 2022

Residential Tenancy Branch