



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, LRE

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 tenant applied for:

- an order to dispute a rental increase, pursuant to section 43; and
- an order to restrict or suspend the landlord's right of entry, under section 70.

Tenant SF (the tenant) and landlord CO (the landlord) attended the hearing. 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 all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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 – Vacant Rental Unit

At the outset of the hearing both parties agreed the tenant vacated the rental unit in late January or early February 2023.

The application for an order to restrict the landlord's right of entry is moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order to restrict the landlord's right of entry.

Issue to be Decided

Is the tenant entitled to an order to dispute a rental increase?

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 tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in 2014. Monthly rent was due on the first day of the month. The landlord collected a security deposit (the deposit) in the amount of \$325.00 at the outset of the tenancy and currently holds it in trust.

The tenant did not authorize the landlord to retain the deposit and did not provide her forwarding address.

The tenant confirmed her forwarding address (recorded on the cover page of this decision) during the hearing.

Both parties agreed the landlord served and the tenant received a notice of rent increase dated December 29, 2021 (the Notice). The tenant submitted a copy of the Notice into evidence. It states the rent is increasing from \$861.90 to \$995.00 effective on March 01, 2022 because of an increase in local government levies ("water is now on the taxes + recycle sewer + garbage removal") and other reasons ("tax increase"). The Notice is the Residential Tenancy Branch (RTB) form 7 from September 1999.

Both parties agreed that monthly rent was \$861.90 until February 28, 2022. The tenant paid \$995.00 per month on March, April, May, June, July, August and September 01,

2022 and \$850.00 per month on October, November and December 01, 2022 and January 01, 2023.

The tenant affirmed that rent increased illegally by \$133.10 per month (\$995.00 minus \$861.90). The tenant is seeking a monetary compensation in the amount of \$931.70 because of the rent increase (\$133.10 per month x 7 months). The tenant's application submitted on September 26, 2022 states:

Amount requested: \$931.00. Taxes for higher hydro and garbage but it is way above the legal limit this is an illegal rent increase and I have told my landlord and she does not agree started paying 133 a month since 2021/03/01 = 931 in overpayment so far.

The landlord stated that she could increase rent to \$995.00 because the rental unit's taxes increased, and the landlord installed a new dryer.

The landlord testified the tenant's roommate agreed to the rent increase. The tenant said her roommate was not a tenant and did not agree to a rent increase.

Analysis

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.

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)

The landlord is subject to section 43(1) of the Act.

In accordance with Regulation 22, the maximum allowable rent increase was (<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases>):

- 2% for 2023
- 1.5% for 2022

I accept both parties' uncontested testimony that monthly rent was \$861.90 until February 28, 2022 and the tenant paid rent in the amount of \$995.00 from March to September 01, 2022.

I find the Notice served by the landlord is not in accordance with regulation 22, as it increased rent from \$861.90 to \$995.00, an increase of approximately 15% and the maximum allowed in 2022 was 1.5%.

Residential Tenancy Branch Policy Guideline 18 states the approved forms are available on the RTB website:

Using a form that is not approved by the Director may be valid if it contains the required information and is not intended to mislead.

If an application is made on an old form, an arbitrator may amend the form or accept the application as validly filed. The arbitrator may refuse to amend the current form if a respondent proves prejudice that is attributable to the use of the old form. An arbitrator may not amend a form which does not contain the required information.

Approved Forms Approved forms are available on the RTB website for printing.

The landlord used a notice of rent increase form from September 1999, which is not in accordance with sections 41 to 43 of the Act, as it indicates that the reasons for the rent increase are an increase in the local government levies and this is not a reason for a

rent increase today, except if the landlord obtains an authorization for an additional rent increase in accordance with Regulation 23. The form served by the landlord is not a form currently approved under section 42(3) of the Act. The current RTB forms are available at <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms>.

A tenancy agreement is an agreement between a landlord and a tenant. Occupants are not authorized to agree to a rent increase with the landlord.

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."

Based on the undisputed testimony, I find the tenant overpaid rent in the amount of \$931.70 from March to September 01, 2022 (\$133.10 per month x 7 months).

As the tenant limited her claim to \$931.00, I award the tenant the amount claimed.

Thus, in accordance with section 43(5) of the Act, I find the tenant is entitled to a compensation in the amount of \$931.00.

As the tenancy has ended, the tenant is entitled to receive a monetary order to recover the illegal rent increase.

I deem the landlord sufficiently served the tenant's forwarding address three days after the date of this decision, per section 71(2)(b) of the Act. The landlord is cautioned to comply with section 38 of the Act.

Conclusion

Monthly rent was \$861.90.

Pursuant to sections 43(5) and 67 of the Act, I grant the tenant a monetary order in the amount of \$931.00 in compensation for overpayment of rent from March to September 01, 2022.

The tenant is provided with this order 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: February 15, 2023

Residential Tenancy Branch