



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI-ARI-C, OLC, FFT  
CNC, LRE, OLC, FFT

### Introduction

This proceeding was adjourned to written submissions following an initial hearing on January 3, 2023 regarding the Tenants' applications under the Act for:

- disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 4, 2022 (the "10 Day Notice") pursuant to section 46;
- disputing a One Month Notice to End Tenancy for Cause dated November 20, 2022 (the "One Month Notice") pursuant to section 47;
- disputing a rent increase above the amount allowed by law in the amount of \$1,500.00 pursuant to section 41;
- an order suspending or setting conditions on the Landlords' right to enter the rental unit pursuant to sections 29 and 70(1);
- orders that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fees for both applications from the Landlords pursuant to section 72.

An interim decision was issued on January 3, 2023 (the "Interim Decision"). This decision should be read together with the Interim Decision.

As per the Interim Decision, the Tenants provided written submissions to the Residential Tenancy Branch on January 9, 2023, and the Landlords provided written submissions on January 16, 2023.

### Preliminary Matter – Service of Landlord's Evidence

As noted in the Interim Decision, this matter was adjourned to written submissions for the Tenants to have an opportunity to review the Landlords' documentary evidence.

Tracking records for the Landlords' registered mail packages (tracking numbers on the cover page of this decision) indicate that the packages were delivered on January 5, 2023. Based on the foregoing, I find the Tenants were served with the Landlords' evidence in accordance with section 88(c) of the Act.

### Issues to be Decided

1. Are the Tenants entitled to dispute a rent increase above the amount allowed by law in the amount of \$1,500.00?
2. Are the Tenants entitled to cancel the 10 Day Notice?
3. Are the Tenants entitled to cancel the One Month Notice?
4. Are the Tenants entitled to an order suspending or setting conditions on the Landlords' right to enter the rental unit?
5. Are the Tenants entitled to orders that the Landlords comply with the Act, the regulations, or tenancy agreement?
6. Are the Tenants entitled to recover their filing fees?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' applications and my findings are set out below.

The rental unit is the upper suite of a house. The Tenants commenced this tenancy on March 1, 2020 with the previous owner of the house. Under the old tenancy agreement (the "Old Agreement"), rent was \$1,250.00 per month due on the first day of each month. The Tenants paid a security deposit and a pet damage deposit of \$600.00 each.

The Landlords purchased the property in April 2022. The parties entered into a new tenancy agreement (the "New Agreement") starting on May 1, 2022 for a fixed term ending on July 31, 2022, and month-to-month thereafter. Clause 3 of the New Agreement states that rent is \$1,750.00 per month due on the first day of each month. There is also a handwritten clause which states "Rental increase to \$1950 August 1, 2022".

The 10 Day Notice has an effective date of August 14, 2022 and states that the Tenants failed to pay rent of \$1,750.00 due on August 1, 2022. The Tenants acknowledged receiving a copy of the 10 Day Notice in person on August 4, 2022.

The One Month Notice has an effective date of December 31, 2022. The reason given for this notice is that the Tenants have “significantly interfered with or unreasonably disturbed another occupant or the landlord”. It provides the following details of cause (portions redacted for privacy):

On May 30, 2022 we received a message from the lower tenant ([KS]) about the fact that the upstairs tenant ([CK]) had been hounding her for their share of the internet payment they had together, earlier than they usually sent it to them. [CK] was sending her rude text messages while [KS] was at work, so both [KS] and her husband [MSC] admittedly got a little testy with [CK] right after that because they felt it was uncalled for since their payment was not late, nor had never been late before this. Due to previous issues and complaints against CK and her boyfriend [MS], as well as us trying to help difuse the situation, this final incident ultimately resulted in [KS] and [MSC] deciding to move out.

Also in October, 2022, the new lower tenant [J] told us about a fight he overheard [CK] and [MS] having which apparently sounded pretty threatening. He did say something to them and [CK] told us she apologized. Again though, due to previous complaints to us from [J] about the shared garbage as well as [CK] and [MS]’s dogs which we had brought to their attention, [J] also decided to move out. (*sic*)

The Tenants acknowledged receiving the One Month Notice via registered mail on November 23, 2022.

The Landlords testified that they set up a time to meet with the Tenants about signing a new tenancy agreement. According to the Landlords, they explained the Landlords’ costs to the Tenants, including the Tenants’ portion of the hydro, and asked if the Tenants were alright with the Landlords raising the rent. The Landlords stated that it was one of the Tenants, CK, who negotiated rent of \$1,750.00 per month starting May 1, 2022 then \$1,950.00 per month starting August 1, 2022 under the New Agreement.

The parties agreed that the Tenants paid rent of \$1,750.00 per month from May to July 2022, nothing in August 2022, \$1,000.00 in September 2022, and \$1,250.00 per month since October 2022.

The Landlords testified that CK tried to text the Landlords about the rent increase in June and July 2022. The Landlords explained that they were busy with KF returning to

work after maternity leave and RF taking care of their young child. The Landlords testified that rent for August 2022 was not received, so the Landlords tried to have a conversation with the Tenants.

The Landlords testified that CK was vague in her responses, and the Tenants did not give any indication that they were thinking about disputing or withholding the rent. The Landlords testified that they asked the Tenants to pay \$1,750.00 first and discuss the \$1,950.00 later. The Landlords stated that CK sent harassing text messages to KF while KF was at work, about how the Tenants had spoken with the Residential Tenancy Branch ("RTB"), had sought legal advice, and how the Landlords had disregarded her previous attempts to communicate. The Landlords were told that the rent increase was outrageous, and the Tenants would be going back on it.

The Landlords testified that they called the RTB. The Landlords argued that the Tenants signed the New Agreement and agreed to the increase in rent. The Landlords testified that they issued the 10 Day Notice, and were told by CK that she had started a dispute. The Landlords testified that they are the Tenants' neighbours and would have been available for discussing the matter. The Landlords explained they were told by CK that the Tenants would pay \$1,000.00 for the next month, then \$1,250.00 per month thereafter until told by the RTB otherwise. The Landlords referred to text message correspondence that they had submitted into evidence.

Regarding the One Month Notice, the Landlords testified that the previous tenants living in the lower suite had many issues with the Tenants prior to the Landlord purchasing the property. The Landlords referred to a statement dated August 25, 2022 from the previous lower suite tenants. According to this statement, there had been domestic disputes between the Tenants in which the police were called to the property, with MS being arrested on one occasion. The Landlords also referred to a text message sent by the previous landlord to the Tenants, which appears to have been forwarded to the lower suite tenants. This text message warns the Tenants that their fighting at 10:30 and 1:30 am at night was "deeply disturbing" the downstairs tenants, and asked the Tenants to respect other people. The Landlords testified that the downstairs tenants moved out one month after the Landlords purchased the property due to a dispute with the Tenants about their shared internet.

The Landlords testified that the Tenants have eight puppies that the Landlords were not aware of. The Landlords stated that the Tenants' dogs would wander in the yard.

The Landlords stated that they had another tenant complain about the Tenants. The Landlords acknowledged that this tenant worked night shifts and slept during the day, so the Landlords considered some of the complaints null and void, and they did not tell the Tenants about them. The Landlords stated that they tried to reach out about some issues between this tenant and the Tenants, including their shared garbage overflowing.

The Landlords added that during an inspection of the rental unit, they found an issue with the toilet, which the Tenants were reluctant to allow the Landlords to fix. The Landlords stated that the Tenants insisted the Landlords hire a professional, which they did.

In response, CK testified that the Tenants were uncomfortable about the rent increase imposed by the Landlords and that they were not entirely aware of their rights. CK testified that the Landlords wanted to increase the rent to \$1,950.00 right away, and the Tenants negotiated that down. CK stated that she has a job, but MS is on disability, and the rent increase caused the Tenants hardship. CK stated the Tenants started missing other bills and had their vehicle re-possessioned.

CK testified that she spoke with the RTB, talked to a lawyer, did research, and determined that when giving a rent increase, it is necessary to use a specific RTB form, and the Landlords must give the Tenants three months' notice before the start of any increase.

CK stated she was told by the RTB that if the Tenants felt they had overpaid rent, then they could withhold. CK stated she was aware that the Landlords' mortgage is higher than that of the Tenants' previous landlord. CK stated she offered to pay an amount that was a bit higher than the allowed 1.5% increase for 2022, but the Landlords weren't interested, and so the Tenants withheld rent. CK explained that when the Tenants tried to reach out to the Landlords, it wasn't a good time and the Landlords were busy with their baby. CK stated that she felt talking in person didn't work out so the Tenants decided to communicate via text messages.

CK testified that MS has a mental illness and that his medications weren't working. CK testified that MS is now getting treatment and receives nurse visits on a monthly basis. CK acknowledged that the police came to the property before, but it was to take MS to hospital and not jail.

CK stated that the garbage bin is small and the Tenants were told by the Landlords it would take up to several weeks to get a larger one or an extra one from the city. CK stated that they have not yet received the requested garbage bin. CK denied that the Tenants had told the Landlords they couldn't come to the property.

### Analysis

*1. Are the Tenants entitled to dispute a rent increase above the amount allowed by law in the amount of \$1,500.00?*

In this case, I find the New Agreement reflects a rent increase of \$500.00 over the rent previously paid by the Tenants. I find this increase was strictly a rent increase and not due to any material changes to the tenancy, such as to compensate the Landlords for the inclusion of a new service or utility in the rent. I find the reasons given by the Landlords for the rent increase to be related to the Landlords' higher mortgage and other costs related to the rental property. Therefore, I find the provisions of the Act regarding rent increases to apply in the circumstances.

Under section 41 of the Act, a landlord must not increase rent except in accordance with Part 3 of the Act. As mentioned in Residential Tenancy Policy Guideline 37. Rent Increases ("Policy Guideline 37"), section 43 of the Act allows a landlord to impose a rent increase only up to the amount:

- Calculated in accordance with the regulations ("annual rent increase")
- Agreed to by the tenant in writing ("agreed rent increase")
- Ordered by the director on an application in the circumstances prescribed in the regulations ("additional rent increase")

For the 2022 year, the maximum permitted annual rent increase under the regulations was set at 1.5%.

I find that through the New Agreement, the Landlords sought to increase the rent by 40%, well above the 2022 maximum annual rent increase.

However, I find the Tenants agreed to the \$500.00 rent increase in writing by signing the New Agreement, which is permitted under section 43(1)(c) of the Act.

I note I do not accept the Tenants' argument that they had signed the New Agreement under duress. Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner: *Lei v. Crawford*, 2011 ONSC 349 at para. 7, as cited in *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183.

I accept the Tenants may have been less informed of their rights at the time that they signed the New Agreement, and have since sought advice from legal counsel, the RTB, and others. However, I do not find the evidence to suggest that the Tenants' wills were "coerced" or that the Landlords had exerted pressure in an "unfair, excessive or coercive manner" to force the Tenants to sign the New Agreement. I find the parties had discussed the New Agreement prior to signing it and the Landlords had explained their costs to the Tenants. Furthermore, I find it is not disputed that the Tenants paid rent of \$1,750.00 for three months before changing their position. I find the Tenants' conduct ratified their written consent to the \$500.00 rent increase under the New Agreement. Therefore, I do not find the New Agreement or the \$500.00 rent increase should be set aside for reasons of duress.

Regarding the timing of and notice for a rent increase, sections 42(2) and (3) of the Act requires a landlord to give a tenant notice of a rent increase at least three months before the effective date of the increase, and a notice of a rent increase must be in the approved form.

Policy Guideline 37 also confirms that the "landlord must give the tenant a completed Notice of Rent Increases 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" (emphasis added).

I find it is undisputed that the Landlords did not give the Tenants at least three months' notice for the rent to increase to \$1,750.00, and did not serve the Tenants with the approved notice of rent increase form.

Therefore, I find that while the Tenants have agreed in writing to a rent increase above the maximum permitted annual rent increase, that is, to a monthly increase of \$500.00, this rent increase cannot take effect until the Landlords have complied with section 42 of the Act by issuing a three-month notice of rent increase to the Tenants in the approved form.

I refer to section 5 of the Act, which states:

**This Act cannot be avoided**

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Based on the foregoing, I conclude that until such time the Landlords issue a notice of rent increase in accordance with the Act to increase the rent from \$1,250.00 to the agreed upon amount of \$1,750.00, rent shall remain at \$1,250.00 per month.

In addition, I find the New Agreement includes a clause which purports to increase rent from \$1,750.00 to \$1,950.00 effective August 1, 2022, three months after the initial rent increase (the “Second Rent Increase Clause”). I find this clause does not comply with section 42(1)(b) of the Act, which states that a landlord must not impose a rent increase for at least twelve months after the effective date of the last rent increase made in accordance with the Act. As noted in Policy Guideline 37, the timing requirements of the Act also apply to agreed rent increases. I find that pursuant to section 5(b) of the Act, the Second Rent Increase Clause constitutes an attempt to contract out of the requirements of the Act and is therefore of no effect. Furthermore, I find the Second Rent Increase Clause to be significantly oppressive and unfair to the Tenants to the point of unconscionability, as its effect is to cause the rent to be increased by \$700.00 (or 56%) from \$1,250.00 to \$1,950.00 over a span of three months. I note the Tenants did not have to sign the New Agreement with the Landlords at all. I find the Second Rent Increase Clause to be so one-sided so as to be oppressive to the Tenants. Therefore, I conclude that the Second Rent Increase Clause is void and unenforceable under section 5(b) of the Act and for unconscionability.

*2. Are the Tenants entitled to cancel the 10 Day Notice?*

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, “unless the tenant has a right under the Act to deduct all or a portion of the rent”.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

**Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenants were served with a copy of the 10 Day Notice in accordance with section 88(a) of the Act on August 4, 2022.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenants had until September 7, 2022 to dispute the 10 Day Notice or pay the outstanding rent in full. Records of the Residential Tenancy Branch indicate that this application was submitted on August 5, 2022. I find this application was made within the time limit stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

According to section 43(5) of the Act, if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase. The Act does not expressly require a tenant to notify the landlord before making this deduction.

The 10 Day Notice states that the Tenants failed to pay rent of \$1,750.00 due on August 1, 2022. However, as I have determined that rent shall remain at \$1,250.00 until such time the Landlords comply with sections 42(2) and (3) of the Act, I find the Tenants to have overpaid rent by a total of \$1,500.00 for the months of May, June, and July 2022. Therefore, I find the Tenants were entitled to deduct such overpayments from August and September 2022 rent under section 43(5) of the Act. I find the Tenants did so and resumed paying rent of \$1,250.00 per month in October 2022. I note the Tenants may have taken a risk by deducting from rent without first making an application to dispute the rent increases, but I find the Tenants were entitled to do so under section 43(5) of the Act.

I conclude the Landlords have not proven that the tenancy should be ended for unpaid rent pursuant the 10 Day Notice. Accordingly, I order that the 10 Day Notice be cancelled and of no force or effect.

*3. Are the Tenants entitled to cancel the One Month Notice?*

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52 of the Act. I find the One Month Notice complies with the requirements of section 52.

I find the Tenants were served with a copy of the One Month Notice on November 23, 2022 in accordance with section 88(c) of the Act. I find the Tenants disputed the One Month Notice on November 23, 2022, within the 10-day time limit prescribed by section 47(4) of the Act.

The reason stated in the One Month Notice corresponds to section 47(1)(d)(i) of the Act, which states:

**Landlord's notice: cause**

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, [...]

I find the Landlords' evidence indicates that the previous downstairs tenants had heard the Tenants arguing and fighting on multiple occasions, and that there had been police involvement at some point. However, I find there was only one documented noise complaint by the downstairs tenants, which was for an incident that had occurred at 10:30 pm and 1:30 am on or around the night of April 4, 2022. I find that not a lot of details were provided about this or any other incident, including a noise complaint which is said to have been made by J in October 2022. As such, I am unable to conclude that the Tenants have caused significant interference or unreasonable disturbance, sufficiently serious to warrant the termination of their tenancy without any formal warning from the Landlords. I note the Tenants' evidence is that MS has a mental illness and is getting treatment.

Similarly, I find the Landlords have not demonstrated that their complaints regarding the Tenants' garbage and pets are sufficiently serious to amount to significant interference or unreasonable disturbance warranting eviction. I find the Landlords have not clearly illustrated the frequency or extent of these problems to justify ending the tenancy. I find the Landlords also did not give the Tenants any written warning that these problems could jeopardize the tenancy.

Based on the foregoing, I conclude the Landlords have not proven sufficient cause for ending the tenancy under section 47(1)(d)(i) of the Act at this time. I order that the One Month Notice be cancelled and of no force or effect.

The Tenants are cautioned that further repetition or continuation of the behaviours complained of by the Landlords may result in the Landlords issuing another one month notice and terminating this tenancy for cause.

*4. Are the Tenants entitled to an order suspending or setting conditions on the Landlords' right to enter the rental unit?*

I find the Tenants have not provided any evidence to suggest that the Landlords have entered the rental unit without the required notice under the Act or without the Tenants' consent. Therefore, I do not find it would be appropriate to grant an order suspending or setting conditions on the Landlords' right to enter the rental unit under section 70(1) of the Act. The Tenants' claims under this part are dismissed without leave to re-apply.

*5. Are the Tenants entitled to orders that the Landlords comply with the Act, the regulations, or tenancy agreement?*

The Tenants have been successful in disputing a rent increase that did not comply with the Act. Pursuant to section 62(3) of the Act, I order the Landlords to not increase the rent except in accordance with the Act and the regulations.

*6. Are the Tenants entitled to recover their filing fees?*

The Tenants have been successful in disputing a rent increase and cancelling the 10 Day Notice and the One Month Notice. However, I find the Tenants could have disputed both notices by amending their first application rather than by filing a new application. The Tenants also have not been successful with their claims to set conditions on the

Landlords' right to enter the rental unit. Therefore, pursuant to section 72(1) of the Act, I award the Tenants 50% of their filing fees, or \$100.00 from the Landlords.

Pursuant to section 72(2)(b) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlords for the month of March 2023, on account of the filing fee awarded.

### Conclusion

The 10 Day Notice and the One Month Notice are set aside. This tenancy shall continue until ended in accordance with the Act.

The Tenants' claim to dispute the rent increases to date is successful. Rent shall continue at \$1,250.00 per month until increased in accordance with the Act and the regulations. The Landlords are at liberty to issue a notice of rent increase in accordance with the Act and the regulations to raise the rent to \$1,750.00 per month as agreed upon by the parties under the New Agreement. The Second Rent Increase Clause to further increase the rent to \$1,950.00 is void and unenforceable under section 5(b) of the Act and for unconscionability.

Pursuant to section 62(3) of the Act, I order the Landlords to not increase the rent except in accordance with the Act and the regulations.

The Tenants are authorized to deduct \$100.00 from rent payable to the Landlords for the month of March 2023, on account of the partial filing fee awarded.

The Tenants' claims to suspend or restrict the Landlords' right to enter the rental unit are dismissed without leave to re-apply.

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 14, 2023

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Residential Tenancy Branch