



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, DRI, RR, RP, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenants applied on September 12, 2022 for:

- compensation for monetary loss or other money owed;
- dispute of a rent increase above the amount allowed by law;
- a rent reduction for repairs, services, or facilities agreed upon but not provided;
- repairs made to the unit or property, having contacted the landlords in writing; and
- recovery of the filing fee.

### Procedural History

This hearing was reconvened after it was adjourned on October 28, 2022. This decision should be read in conjunction with the Interim Decision issued on November 1, 2022.

The Interim Decision and notices of reconvened hearing (containing the call-in numbers for this hearing) were sent to each of the parties, at the emails addresses they provided to the Residential Tenancy Branch.

In each hearing, the parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matter

In a September 28, 2022 decision by another arbitrator, noted on the cover page of this decision, the arbitrator found that the tenancy ended on April 30, 2022, and granted the landlord an order of possession for October 31, 2022.

As the hearing began on October 28, 2022, and the order of possession is dated three days later, I dismiss without leave the tenants' claim for repairs.

### Issues to be Decided

- 1) Are the tenants entitled to compensation for monetary loss or other money owed?
- 2) Are the tenants entitled to compensation related to a rent increase above the amount allowed by law?
- 3) Are the tenants entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided?
- 4) Are the tenants entitled to the filing fee?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began on November 1, 2017, and the current landlords purchased the house in October 2018. The rental unit is a basement unit in the house. Rent is \$1,550.00, due on the first of the month, and the tenants paid a security deposit of \$750.00, which the landlords hold in trust.

The original tenancy agreement is not submitted as evidence. Submitted as evidence is a copy of the Contract of Purchase and Sale Addendum, showing that rent was \$1,500.00, including utilities and cable.

In the reconvened hearing, the tenants testified they vacated the unit on October 29, 2022; the landlord testified the tenants vacated the unit on October 29 or 30, 2022.

### *Dispute of rent increase*

The tenants' application states they are seeking \$1,600.00, calculated up to September 2022, because the landlord implemented an illegal rent increase. The application requests that the amount be increased to reflect the time between the application and the hearing. The tenant testified they are seeking to recover the \$50.00 per month increase. The tenant testified that under their tenancy agreement, rent was \$1,500.00, but in January 2020 the new owners verbally told them the rent would increase by \$50.00 beginning in February 2020. The tenant testified they were not given a rent increase form, and that at the time they "did not know better."

The landlord testified that when they gave the tenants verbal notice of the \$50.00 increase to begin in March 2020, the tenants agreed, and began paying the increase early, in February 2020. The landlord submitted that the legal concept of estoppel applies, as the tenants paid the rent increase.

Submitted as evidence is a bank statement showing that in February 2020 the tenants began paying \$1,550.00.

The landlord submitted that having learned of the rent increase limit, should I find estoppel does not apply, they are prepared to return \$341.00 to the tenants, calculated as  $\$11.00 \times 31 \text{ months} = \$341.00$ . The landlord explained they arrived at this amount as the maximum allowable increase for 2020 was 2.6 percent, so the landlord was permitted to increase the rent by \$39.00. So, \$11.00 is the difference between the implemented increase and the allowed increase (\$50.00 - \$39.00).

### *Rent reduction*

The tenants' application indicates the tenants are seeking a total rent reduction in the amount of \$4,440.02, and states that the amount is for cable and internet calculated up to September 2022. Their application requests that the amount be increased to reflect the time between the application and the hearing.

I asked the tenant how they came to the amount of \$4,440.02. The tenant testified that their utilities and cable had been included in the tenancy agreement. This is supported by the Contract of Purchase and Sale Addendum submitted as evidence, noting that rent was \$1,500.00, including utilities and cable.

The tenant testified that when the current landlord took over the tenancy, they asked the tenant to pay cable and internet and said that their rent would be reduced accordingly.

The tenant testified that as of March 2019, the landlord said the tenants were no longer permitted to deduct an amount for cable and internet from the rent, which resulted in the following additional costs for the tenants:

| Time period                                     | Cable and internet paid by tenants |
|---|------------------------------------|
| March to December 2019 at \$99.11 per month     | \$991.10                           |
| January to December 2020 at \$99.11 per month   | \$1,189.32                         |
| January to December 2021 at \$107.60 per month  | \$1,291.20                         |
| January to September 2022 at \$107.60 per month | \$968.40                           |
| October 2022                                    | \$107.60                           |
| Total   | \$4,547.62                         |

The landlord testified that they were provided with no written tenancy agreement by the previous landlord, just the contract of sale. The landlord testified they were not able to move in right away, but cable could not be installed so a rent reduction was set. The landlord testified that after they moved in, they had difficulty arranging cable and internet, so the parties agreed the tenant would arrange her own cable. The landlord testified that from November 2018 to February 2019, the tenant was permitted to deduct cable and utilities costs from the rent.

The landlord testified that on March 1, 2019, the parties verbally agreed to a new tenancy agreement, in which rent was \$1,500.00 but did not include cable and internet.

The landlord submitted the principle of estoppel applied as the tenant's behaviour demonstrates her agreement. The tenant testified she did not know her rights and just paid the amounts.

#### *Monetary loss or other money owed*

In the hearing the tenants testified they seek \$23,000.00 for this claim, not the \$24,000.00 stated in their application. The tenant also testified they are seeking to recover one third of the rent amount from January 2019 to September 2022. The tenants testified they are seeking \$450.00 a month for 46 months for loss of enjoyment due to an ongoing mouse infestation, and \$50.00 a month for 46 months for repair and maintenance issues.

The tenants testified that the landlords have not rectified an ongoing mouse infestation in the unit, which began in October 2018 and has been a problem for about four years, causing significant difficulties for the tenants.

The tenant testified that on January 1, 2019 they saw a mouse and notified the new landlord, who came down and offered the tenant glue pads and poison. The tenant submitted that as the landlord had these items on hand, that suggested a pre-existing mouse problem the landlord was aware of. The tenant testified they continued to text the landlord in January 2019 about the mouse issue but that it was not resolved.

The tenant testified that in June 2019 they sent the landlord a text about the mouse infestation and sent photos. The tenant testified she had asked the landlord to have an exterminator visit but the landlord instead came down with a friend who patched up one whole.

The tenant testified that the mouse problem continued, and there was communication back and forth between her and the landlord, sometimes by text and sometimes verbally, but nothing was done.

The tenant testified they notified the landlord again on November 19, 2019 about the mouse issue.

The tenant testified she was buying her own glue pads to trap the mice.

The tenant testified that during 2020 there was less texting with the landlord about the problem, and that the tenant became frustrated as nothing was being done. The tenant submitted that the landlord did not believe in getting an exterminator in.

The tenant referred to the landlord's evidence referring to the landlord removing a tree in April 2020 to try to address the mouse problem. The tenant submitted this shows the landlord knew there was still an issue.

The tenant testified that in July 2021 she had spoken with the landlord in person about the mouse problem, and texted her about it again in October 2021. In November 2021, after the tenant sent more pictures of dead mice, the landlord said she would get an exterminator in. On December 10, 2021 the landlord followed up with a friend who is an exterminator, but they just put down black boxes. The tenant submitted she was not advised on how to follow up, so asked the landlord.

The tenant testified that when she was out of town she responded to the landlord's texts as soon as possible after returning. The tenant testified that she always followed through promptly with the landlord.

The tenant testified that in 2022 the landlord called an exterminator, and that things have been better since mid-September.

The tenant testified that the living conditions had been very challenging, with the mice, two kids, and a dog. The tenant testified that she and her family had been living with mouse pads all over the house, having to block them with cardboard boxes to protect the dog, as the dog had got stuck to the glue traps, requiring veterinary care. The tenant testified that her finger was snapped by a mouse trap. The evidence submitted by the tenant includes numerous photos of dead mice.

The tenant provided testimony on repairs that had not been done, including repair to underneath a sink, repair of a faucet, a mould problem, and a water leak from the ceiling, but provided no details on these issues.

The landlord acknowledged that there had been a problem with mice, but that they took reasonable steps to address the issue. The landlord submitted that the tenant's characterization of the situation is not accurate, and there has not been a persistent mouse issue throughout the tenancy. The landlord testified that when the tenant complained, the landlord acted reasonably.

The landlord testified that the first time the tenant raised the mouse issue was in October 2018, before the landlord moved into the property, but they responded within hours to plug holes in the unit.

The landlord testified that when the tenant complained on January 1, 2019 that she had seen a mouse, the landlord responded, telling the tenant to use glue pads. The landlord had found the pads in the home when they moved in.

The landlord testified that the next time the tenant said she saw a mouse was June 20, 2019. The landlord testified that because the tenant had asked for an exterminator to visit, the landlord told the tenant she would arrange for someone to come, but if she could not find someone over the weekend, the tenant could call someone herself.

The landlord testified that on June 23, they visited the unit again as they understood the mice might be in the walls. The landlord filled holes from inside the unit, some of which the tenant identified.

The landlord testified that on June 25 and 28, 2019, the tenant complained about mice again, so the landlord said some mice may be left in the house and that her husband would check in a couple days, as he was away.

The landlord testified that from June 28 to November 19, 2019, the tenant did not complain about mice.

The landlord testified that on Nov 19, 2019, the tenant texted that there was a mouse on a sticky trap. The landlord responded immediately that they will check, then got busy on the weekend.

The landlord testified that the tenant's testimony that she had made some verbal complaints was not true. The landlord testified that the presence of mice was sporadic, and that if it had been ongoing, the tenant would have texted urgently, as was her habit, but that did not occur.

The landlord testified that around December 2019 they consulted a builder about the mice; the builder suggested that the issue is because the unit is underground, so the landlord removed a hedge and built a wooden fence, finishing the work in April 2020.

The landlord testified that from December 2019 to October 2021, 22 months, there were not complaints from the tenant about the mice.

The landlord testified that on October 17, 2021 the tenant complained about mice and provided the contact information for an exterminator, and the landlord responded. On October 23, the landlord said they would follow up and gave the tenant sticky pads.

The landlord testified they received texts from November 13-15, 2021 from the tenant, and that they told the tenant they were trying to get an exterminator in. The landlord testified the tenant became impatient when the landlord did not respond within an hour and a half.

The landlord testified that on November 16, 2021, an exterminator attended and determined that the mice were entering from the fireplace, so it was blocked off. The landlord testified that on November 29, 2021 she requested the tenant's availability for the exterminator, but the tenant did not respond. The landlord testified that she followed up on her text to the tenant on December 10, 2021, but the tenant did not provide her availability. The landlord testified that on December 13, 2021, she texted the tenant to ask when the landlord could attend to look at a hole behind the stove the

tenant had found. From December 13-18, the parties attempted to schedule a time for the landlord to visit. On December 18, 2021 the landlord visited the unit and added steel wool to the hole.

The landlord testified that on February 10, 2022 the tenant had reported that she continued to find mice and that the tenant said there had been no follow up by the exterminator. The landlord submitted that on December 10 the landlord had asked for the tenant's availability so as to book the exterminator, but the tenant had not provided it. The landlord testified that the exterminator attended on February 15, 2022.

The landlord testified that after receiving a request from the tenant to call the exterminator, the landlord attempted to schedule the visit, but that on May 8 and 12, 2022, the tenant was not providing her availability, so the landlord had to propose a time. The landlord testified that on May 20, 2022, an exterminator visited, and said they had found some vulnerabilities that can be sealed. That work was done on June 4, 2022.

The landlord testified that on August 28, 2022 the tenant said she wanted to discuss the ongoing mouse issue. The landlord testified this was the first time the tenant had brought up mice since May, and that she told the tenant that the tenant must tell the landlord if there is a reoccurrence of the mouse problem.

The landlord testified that as of May 2022, the exterminator attends the rental unit regularly to be proactive, visiting in May, June, and September, attending to the exterior, and to the rental unit when requested by the tenant. On September 9, 2022 the exterminator attended and provided their contact information to the tenant.

## Analysis

### *Dispute of rent increase*

Section 42(3) of the Act states that a notice of a rent increase must be in the approved form. The approved form is the RTB [Notice of Rent Increase](#) document.

Section 43 of the Act states:

- 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.

The parties agree that when the subject landlords purchased the property, the tenants paid \$1,500.00 in rent.

The tenant testified that the landlords did not use the RTB form when implementing the rent increase, as required by section 42 of the Act.

There is no evidence before me that the tenants agreed in writing to a rent increase in the amount of \$50.00.

The landlord has submitted that the tenants agreed to the increase, and that the legal principle of estoppel applies, as the tenants paid the increase. I reject this line of reasoning. Policy Guideline 37B: *Agreed Rent Increase* states that a tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. The agreement must:

- be in writing,
- clearly set out the rent increase,
- clearly set out any conditions for agreeing to the rent increase,
- be signed by the tenant,
- include the date that the agreement was signed by the tenant, and
- a Notice of Rent Increase must be issued to the tenant three full months before the increase is to go into effect.

As neither party presented as evidence an agreement in writing, or a Notice of Rent Increase, and because the parties agreed the tenants were not given three months notice, I find the increase was not done in accordance with the Act.

Based on the foregoing, I find, on a balance of probabilities, that rent remained at \$1,500.00 a month for the duration of the tenancy.

I find the tenants are entitled to a monetary award of \$1,650.00, the amount of increased rent they paid during the tenancy from February 2020 to October 2022 (\$50.00 x 33 months = \$1,650.00).

*Rent reduction*

Based on the tenant's affirmed testimony, and the submitted Contract of Purchase and Sale Addendum, I find that in the tenancy agreement between the tenants and the previous landlord, cable and internet were included in the tenant's rent of \$1,500.00.

The tenant is seeking to recover the amount they paid for internet and cable after the subject landlord said they would no longer be included in the rent, beginning March 2019.

The landlord testified that on March 1, 2019, the parties verbally agreed to a new tenancy agreement, in which rent was \$1,500.00 but did not include cable and internet. The landlord submitted the principle of estoppel applied as the tenant's behaviour demonstrates her agreement.

Section 14 of the Act states that a tenancy agreement may be amended to add, remove, or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Section 1(2) of the Schedule section of the *Residential Tenancy Regulation* states that any change or addition to the tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. It states that if a change is not agreed to in writing, is not initialed by both the landlord and the tenant, or is unconscionable, it is not enforceable.

As the landlord testified that on March 1, 2019, the parties verbally agreed to a new tenancy agreement, in which rent was \$1,500.00 but did not include cable and internet, and did not submit as evidence a tenancy agreement in which the parties had agreed in writing to the change, I find the verbal change to the tenancy agreement is without force, and that the tenancy continued under the terms of the original agreement, including that internet and cable were included in the rent of \$1,500.00.

Therefore, I find the tenants are entitled to a monetary award for \$4,547.62, the amount they paid for internet and cable during the tenancy.

I reject the landlord's argument that estoppel applies, as the tenant testified that she was not aware of her rights, and because section 1(2) of the Schedule section of the *Residential Tenancy Regulation* is clear on how a change to a tenancy agreement must be made in order to be enforceable.

*Monetary loss or other money owed*

The tenant is seeking compensation from the landlord in the amount of \$23,000.00.

Section 7 and 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the Regulation, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

Policy Guideline 16 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. In order to determine whether compensation is due, the arbitrator may determine 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.

The tenants' application indicates they seek compensation for loss of enjoyment and constant struggles with mice.

Considering the four-part test mentioned above, in order to determine whether the tenant is entitled to compensation, I must first determine whether the landlord breached the Act, Regulation, or tenancy agreement.

The tenant provided testimony and documentary evidence describing their experience with a mouse infestation, and their efforts to have the landlord address the problem. The tenant described how they repeatedly engaged the landlord, asking them to remedy the situation, and that the tenant became frustrated as nothing was being done.

In contrast, the landlord provided extensive and detailed testimony on the actions they took, and when, in response to the tenant's complaints. The landlord testified that the mouse problem was intermittent, and there were long gaps between the tenant's complaints, during which the landlord assumed that the issue had subsided. The landlord testified that at times the tenant would not promptly notify them when the mice returned. The landlord testified to having difficulty getting the tenant to respond to their request for her availability so the landlord could schedule an exterminator.

Section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character, and location of the rental unit, making it suitable for occupation by a tenant.

I favour the evidence of the landlord over that of the tenant, as the landlord has provided a much more thorough, detailed account of the events, including the steps they took to respond to the tenant's complaints. Additionally, the landlord has demonstrated that at times the tenant did not act in a reasonable way, such as not immediately reporting the reoccurrence of the mouse problem, and repeatedly failing to provide contact information to facilitate an exterminator visit.

Based on the evidence before me, I find the landlord repeatedly took steps to comply with section 32.

As, in her testimony, the tenant referred only briefly to outstanding repair issues, providing no details, I find she has failed to prove she is entitled to compensation related to the repair issues.

I find, on a balance of probabilities, that the tenant has failed to prove that damage or loss resulted from the landlord not complying with the Act, the regulation, or the tenancy agreement, and that they acted reasonably to mitigate their loss.

Pursuant to sections 7 and 67 of the Act, I find that the tenant is not entitled to compensation for monetary loss or other money owed.

### *Filing fee*

Section 72 of the Act gives an arbitrator the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is somewhat successful in her

application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

I find the tenant is entitled to a monetary order as follows:

|                |                   |
|----------------|-------------------|
| Rent increase  | \$1,650.00        |
| Rent reduction | \$4,547.62        |
| Filing fee     | \$100.00          |
| <b>Total</b>   | <b>\$6,297.62</b> |

### Conclusion

The tenant is granted a monetary order in the amount of \$6,297.62. 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).

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: March 30, 2023

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Residential Tenancy Branch