



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding ADVENT REAL ESTATE SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, DRI, OLC, FFT

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 rent increase, pursuant to section 43;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Applicant JS (the tenant) and the respondent, represented by agent MF (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 and section 95(3) of the Act.

The tenant registered mailed the notice of hearing and the evidence (the materials) on January 25, 2023. Canada Post indicates the materials were delivered on January 26, 2023. The landlord confirmed receipt of the materials and affirmed that she could not serve the response evidence.

I asked the landlord to explain what happened between late January and mid-April 2023. The landlord said that the agent that received the materials had a health issue and retired. The landlord only received the materials from the agent after the deadline to submit response evidence.

Based on the undisputed testimony, I find the tenant served the materials in accordance with section 89(1) of the Act.

The landlord did not provide dates or details to explain why she could not serve the response evidence. I did not adjourn the hearing to offer the landlord a chance to serve response evidence because the landlord's testimony about what happened after she received the materials was vague.

Preliminary Issue – unrelated claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the dispute of the rent increase and the monetary claims are not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for the rent increase. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except the dispute of the rent increase and the monetary claims, which will be decided upon.

Preliminary Issue – amendment of the monetary claim

At the hearing the tenant sought to amend the monetary claim for \$32.00 for the overpaid rent of January 2023 to include an additional \$128.00 for the overpaid rent of February, March, April and May 2023.

The application states: "They have overdrawn on the first months rent of a new lease. The lease amount is \$1620. I want this money back and any future over drawn rent payments they take before the case is resolved."

The increase in the monetary claim for overpaid rent should have been reasonably anticipated by the landlord. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the monetary claim for \$160.00.

Issues to be Decided

Is the tenant entitled to:

- an order to dispute a rent increase?

- a monetary order for losses?
- an authorization to recover the filing fee?

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 claims 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 ongoing tenancy started on March 01, 2020. Monthly rent is due on the first day of the month. At the outset of the tenancy the landlord collected and currently holds in trust a security deposit of \$800.00.

The tenant submitted the tenancy agreement dated January 04, 2023 for a fixed-term from February 01, 2023 to January 31, 2024 (the 2023 tenancy agreement). It states that monthly rent is \$1,620.00.

Both parties agreed the landlord has received monthly rent of \$1,652.00 from January 01 to May 01, 2023. The tenant claims the agreed amount of rent is \$1,620.00 since March 01, 2020.

The tenant stated that she did not receive a notice of rent increase. The landlord testified that she mailed notices of rent increase in December 2022.

The tenant affirmed that she regularly receives mail, and she does not have issues with lost mail.

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.

42

(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.

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.

(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

Based on the 2023 tenancy agreement and the undisputed testimony, I find that monthly rent is \$1,620.00 since March 2020. I am not making a finding regarding service of a notice of rent increase, as the parties signed the 2023 tenancy agreement agreeing to a monthly rent of \$1,620.00.

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 \$160.00 from January 01 to May 01, 2023 (\$32.00 per month x 5 months).

As such, I order the landlord to pay the tenant \$160.00.

Pursuant to section 72(1) of the Act, as the tenant is successful with this application, I authorize the tenant to recover the \$100.00 filing fee.

Conclusion

Monthly rent is \$1,620.00.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$260.00 from the next rent payment to recover the filing fee and the overpaid rent.

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: May 25, 2023

Residential Tenancy Branch