



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding CENTURY 21 LAKESIDE REALTY  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNR, CNE, CNL-MT, DRI-ARI-C, FFT**

### **Introduction**

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") under Sections 46 and 55 of the Act;
2. Cancellation of the Landlord's One Month Notice to End Tenancy for End of Employment (the "One Month Notice") under Section 48 of the Act;
3. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") under Section 49 of the Act;
4. More time to dispute the notice under Section 66 of the Act;
5. An Order to dispute an Additional Rent Increase for Capital Expenditures under Section 43 of the Act; and,
6. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agent 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 (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 and evidence for this hearing on February 8, 2023 by Canada Post

registered mail (NoDRP package). The Landlord's agent confirmed receipt and provided the Canada Post registered mail tracking number. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on February 13, 2023, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Preliminary Matter

#### *Unrelated Claims*

At the outset of the hearing, the parties confirmed that the tenancy ended on March 31, 2023 after the Tenant was served an Order of Possession.

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. As the tenancy has ended, all the claims to cancel the notices to end tenancy are moot. The claim to dispute the additional rent increase, although incorrect as the Tenant clarified it was a claim to dispute an unlawful rent increase, this matter had been resolved between the parties. The only relevant claim was the Tenant's request for recovery of the application filing fee. I will only consider the claim for recovery of the application filing fee at this proceeding. The Tenant's other claims are dismissed.

### Issues to be Decided

Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to 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 November 1, 2021. The fixed term ended on April 30, 2022, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,800.00 payable on the first day of each month. A security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord's agent testified that the Tenant signed a new tenancy agreement on July 19, 2022 which specified that the rent would be \$3,000.00 per month. The Tenant thought he had no option. The Tenant uploaded a copy of this new tenancy agreement, and the start date was noted as August 1, 2022. The Landlord did not serve a Notice of Rent Increase form on the Tenant with the new tenancy agreement.

Come December 2022, the Tenant protested the illegal rent increase and refused to pay rent in December. The Landlord issued a 10 Day Notice for unpaid rent on December 22, 2022.

The Landlord applied for a direct request adjudication on their 10 Day Notice on December 31, 2022.

The Tenant applied for this dispute resolution claim on February 7, 2023 and he paid the \$100.00 application filing fee for this application.

The 10 Day Notice was adjudicated by direct request on February 23, 2023, and the Landlord was granted an Order of Possession. Prior to this file's adjudication, the parties had settled their dispute of the unpaid rent as the Landlord had accepted that getting the Tenant to sign the new tenancy agreement with the rent increase was not proper.

The Tenant argued that a property management company should know the rules better, and although the rent increase amount was settled, the Tenant is still out of pocket \$100.00 for the application filing fee he paid to dispute the rent increase. He wants it returned.

### 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.

Residential Tenancy Policy Guideline #37-Rent Increases (PG#37) is intended to help parties understand issues that are likely to be relevant in an application to dispute a rent increase. PG#37 discusses permitted rent increases, the timing requirement for these

increases, and the notice requirement. It also sets out the requirements when an agreed rent increase is established. PG#37 states:

**C. AGREED RENT INCREASE**

*A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must be in writing, must clearly set out the rent increase (for example, the percentage increase and the amount in dollars), and must be signed by the tenant. A Notice of Rent Increase must still be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant. (emphasis added)*

The Landlord did not issue a formal Notice of Rent Increase on the Tenant when he signed the new tenancy agreement with the \$200.00 increased rent amount. The Tenant thought he had no option. The parties have settled all the rent increased amounts; however, the Tenant still had applied for this dispute resolution application and had paid the \$100.00 application filing fee. I find that the property management company improperly implemented a rent increase on the Tenant, and because of this the Tenant paid the application filing fee to dispute it.

The Tenant applied for dispute resolution disputing the rent increase as is his right. The parties had already resolved the rent increase amount, but the Tenant had paid the application filing fee, and I find he is entitled to the return of that fee. I grant a monetary order to the Tenant for \$100.00 which represents the amount he paid to begin this dispute resolution.

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$100.00. 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: May 25, 2023

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Residential Tenancy Branch