



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and one of the Tenants, BC, attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. CE attended this hearing as an assistant for the Tenants. AC, the other of the two Tenants, attended part of this hearing and gave affirmed testimony. GJ attended as a witness for the Landlord and gave affirmed testimony.

The parties were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

The Landlord acknowledged receipt of the notice of dispute resolution proceeding package and documentary evidence from the Tenants. The Landlord did not submit additional documentary evidence.

### Preliminary Matter – Addition of Tenant and Clarification of Dispute Address

This application initially included BC as the sole tenant and applicant. The parties agreed that AC is also a tenant. By consent of the parties and pursuant to section 64(3)(c) of the Act, I have amended this application to include AC as a second tenant and applicant.

In addition, the parties confirmed that the rental unit is the main portion of a house, not the entire house. Pursuant to section 64(3)(c) of the Act, I have updated the dispute address accordingly.

#### Preliminary Matter – Partial Settlement

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise, and achieved a partial resolution of their dispute.

In this application, one of the claims sought by the Tenants under an order for the Landlord to comply with the Act, the regulations, or tenancy agreement was an order for the Landlord to provide the Tenants with copies of their invoices for utilities, namely FortisBC and BC Hydro. The parties agreed to a final and binding settlement of this claim as follows:

1. The Landlord will provide a copy of the 2022 FortisBC and 2022 BC Hydro invoices (collectively, the “2022 Invoices”) to the Tenants by April 28, 2023.
2. Upon receipt of the 2022 Invoices, the Tenants will pay to the Landlord the Tenants’ share of the 2022 Invoices that remain unpaid, in four equal installments due on:
  - a. April 30, 2023
  - b. May 31, 2023
  - c. June 30, 2023, and
  - d. July 31, 2023.
3. Moving forward, the Tenants will pay the Landlord for the Tenants’ share of the FortisBC and BC Hydro invoices within two weeks of receiving a copy of the invoice from the Landlord.

The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as final, binding, and enforceable, which settle the Tenants’ claim in this application regarding utilities.

### Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?
2. Are the Tenants entitled to reimbursement of the filing fee?

### 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 this application and my findings are set out below.

This tenancy commenced on March 5, 2018. Rent is currently \$2,400.00 due on the first day of each month. The Tenants paid a security deposit of \$1,100.00.

On June 7, 2022, the parties signed a new tenancy agreement (the “Agreement”) to renew their tenancy for another fixed term.

The Agreement is in the standard Residential Tenancy Branch form. Section 2 of the Agreement provides a start date of July 1, 2022 and an end date of July 1, 2023. It appears that the end date was originally July 1, 2024, but the year was crossed out and replaced with 2023. There is a small initial above this change. Section 3 of the Agreement states that rent is \$2,400.00 per month, with handwritten notes saying “- rent will remain same for 24 months” and “- utilities are paid for by tenant 80%”. The parties initialled in boxes immediately above the two handwritten notes.

According to BC’s written statement:

- The Tenants paid rent of \$2,200.00 per month from March 2018 to June 2022.
- On June 7, 2022, the Landlord met with the Tenants to sign a new contract effective July 1, 2022. The Landlord stated that the rental unit was now worth \$1,000.00 more per month. The Landlord requested a \$400.00 rent increase. The Tenants agreed to a \$200.00 increase, or monthly rent of \$2,400.00, in return for a 2-year fixed term agreement to give the Tenants’ family some longer term stability.
- After some discussion, the Landlord wrote the note on the Agreement that “rent will remain same for 24 months”, which is evidence that the agreed upon tenancy was for two years. The parties signed the Agreement. The Landlord sent the

Tenants pictures of the Agreement via text message but did not give the Tenants a paper copy of the Agreement.

- On July 24, 2022, the Tenants were looking at the pictures of the signed Agreement and noticed that the end date of July 1, 2024 had been scratched out by the Landlord and 2023 was written above it, along with only the Landlord's initials. The Tenants had not agreed to this change.
- On July 30, 2022, the Tenants sent a letter dated July 28, 2022 (the "July Letter") via registered mail to the Landlord to formally request a paper copy of the Agreement with the correct end date of July 1, 2024, as originally agreed upon. The Landlord did not provide a response.
- The Tenants followed up with the Landlord in September and October 2022. Finally on December 21, 2022, the Tenants informed the Landlord that if they do not receive a paper copy of the Agreement with the correct end date, they will file an application for dispute resolution with the Residential Tenancy Branch.

The July Letter from the Tenants to the Landlord states in part as follows:

On June 7th, 2022, the amount you had specified you were wanting to raise our rent was \$400 per month; this was almost a 20% rent increase, way above the 1.5% legal limit. We only chose to listen and negotiate with you because it was a two year contract we signed. We agreed to stretch our budget to our max and meet you in the middle at a \$200 per month increase that would hold for a 24 month period starting July 1, 2022 and ending July 1, 2024. We never, and would never, have waived our right on a 3 month waiting period (landlord must give the tenant three full months' notice of the rent increase) for the rental increase and paying over six times the legal increase for only a 1 year lease contract (for residential tenancies, the standard allowable rent increase for 2022 will be 1.5%).

We do not know when 2024 was scratched out and initialled by only you in Section #2 of the Tenancy Agreement, but we, knowingly, signed a 2 year contract and feel we should have been informed when this took place.

The Tenants also submitted screenshots of text message correspondence with the Landlord into evidence.

In response, the Landlord stated that she told the Tenants she would be doing annual lease renewals every summer, one year at a time. The Landlord stated that she and her sister GJ met BC and BC's mom at the rental unit. The Landlord agreed that she talked

about a rent increase and that the parties worked to meet in the middle, which was the \$200.00 increase. The Landlord stated that she had not increased the rent for the previous four years.

The Landlord confirmed that she agreed to not increase the rent for two years. The Landlord confirmed she made the handwritten notes regarding rent remaining the same for 24 months and the utilities.

The Landlord stated that when they were doing the Agreement, she made a mistake and accidentally put 2024 as the fixed term end date under section 2. According to the Landlord, she scratched it out and initialled it in front of BC. The Landlord explained she was unsure how she might deal with the property in the future, whether she would sell it or move in. The Landlord stated that she was not agreeing to enter into a two-year contract, though she did commit to not increasing the rent for two years if the tenancy did continue.

The Landlord stated that she sent photos of the signed Agreement to the Tenants right away while she and GJ were leaving the rental unit. The Landlord stated that she had not yet reached her parents' house when she sent the photos. The Landlord denied having gone back and made changes to the Agreement by herself. The Landlord argued that it would not make sense to scratch out the year but leave the handwritten note about the rent. The Landlord stated that AC was not present for the whole conversation and came only at the very end. The Landlord stated that she did not come with a printer and scanner, so she was unable to give the Tenants a paper copy.

AC stated that she went through the paperwork and checked everything was correct before proceeding. AC confirmed that the Agreement stated 2024 as the year, which was not crossed out, and that the rent would not be increased for 24 months. AC stated that she saw these and then signed the Agreement. AC stated that the Landlord left in a haste due to a family matter.

GJ confirmed that she had accompanied the Landlord to the rental unit. GJ stated that the Landlord and BC had a long conversation about increasing the rent, and agreed on a \$200.00 increase. GJ agreed that the Landlord had made a mistake regarding the term of the Agreement, which the Landlord fixed. GJ stated that AC came at the end. GJ denied that she and the Landlord had left in a haste. According to GJ, when the Agreement was presented to AC for signing, it already had the change made by the

Landlord and was initialled. GJ stated that she was sitting quietly observing this meeting.

BC stated that the parties had clearly talked about a two-year contract with an end date of 2024. BC stated that the parties had also verbally discussed three things, which were cleaning the gutter, cleaning the HVAC, and fixing the kitchen light. BC disagreed that the Landlord had noticed her mistake and changed the Agreement in front of him. BC stated that the Tenants just want the two-year contract honoured.

### Analysis

*1. Are the Tenants entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?*

The Tenants seek a paper copy of the signed Agreement with the correct end date of July 1, 2024 as agreed upon and signed on June 7, 2022.

The credibility of the witnesses' testimonies was a key issue in this application. The Landlord and GJ testified that the change to the end date was made before the parties had signed the Agreement, while the Tenants insisted that it had not been made when they signed the Agreement.

The Provincial Court of British Columbia in *R. v. Parent*, 2000 BCPC 11 summarized a list of factors that courts have recognized as helpful in assessing credibility, which include:

1. the witness' ability to observe the events, record them in memory, recall and describe them accurately,
2. the external consistency of the evidence. Is the testimony consistent with other, independent evidence, which is accepted?
3. its internal consistency. Does the witness' evidence change during direct examination and cross-examination?
4. the existence of prior inconsistent statements or previous occasions on which the witness has been untruthful.
5. the "sense" of the evidence. When weighed with common sense, does it seem impossible or unlikely? Or does it "make sense"?
6. motives to lie or mislead: bias, prejudice, or advantage.
7. the attitude and demeanour of the witness. Are they evasive or forthcoming, belligerent, co-operative, defensive or neutral? In assessing demeanour all

possible explanations for the witness' attitude should be considered, and it is necessary to be sensitive to individual and cultural factors, which may affect demeanour. Because of the danger of misinterpreting demeanour, this factor is not be relied alone.

I have considered the above factors in assessing the testimony of each witness, and I find the Tenants' evidence to be more credible for the following reasons:

- First, I find a two-year fixed term to be more consistent with a term stipulating that rent will remain the same for 24 months. I find the reference to 24 months loses a certain degree of meaning if the Landlord could end the tenancy through no fault of the Tenants less than 24 months after the Agreement was signed. I further find this term does not contain any conditions or qualifications, such as "rent will remain the same for *up to* 24 months", or "if this tenancy were to continue for 24 months, rent will remain the same during this period" etc.
- Second, I find the Landlord and the Tenants each signed at the end of the Agreement and each initialled the boxes above the handwritten notes. However, I find that only the Landlord initialled next to the revised year for the end date.
- Third, I find the Tenants' position to be consistent throughout their correspondence with the Landlord since the end of July 2022. In contrast, I find while the Landlord expressed shock during the hearing that the Tenants had not seen any change to the end date before signing the Agreement, I do not find the Landlord to have stated this position in any of the prior written communications between the parties. I find the text messages submitted into evidence show that the Landlord responded to some of the other issues raised by the Tenants, but had not respond substantively to the Tenants' request to correct the end date of the Agreement for several months at all. I find the Landlord only indicated that she has been in contact with her lawyer about some of the items mentioned by the Tenants.
- Finally, I find the Tenants' explanation in the July Letter regarding how they had negotiated the terms of the Agreement to make sense. I find the Tenants had no obligation to agree to a rent increase above the legally allowed amount or waive the three month notice period for a rent increase. I accept the Tenants' evidence that they had agreed to a greater rent increase in return for stability over a longer fixed-term period.

Overall, I find the Tenants' version of events to have more external consistency and to be more likely when weighed with common sense.

Based on the foregoing, I find on a balance of probabilities that the end date of the Agreement had not been revised from 2024 to 2023 when it was signed by the parties on June 7, 2022. I find the parties had agreed to a two-year fixed term starting on July 1, 2022, and that the Tenants did not agree to change it to a one-year fixed term.

Section 14(2) 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.

Under section 62(3) of the Act, the director may make an order necessary to give effect to the rights, obligations, and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations, or a tenancy agreement.

Pursuant to sections 62(3) and 14(2) of the Act, I order that the fixed-term end date provided in section 2 of the Agreement is July 1, 2024.

I find the Tenants to be sufficiently with served a copy of the Agreement via text message. Therefore, having made a determination regarding the fixed-term end date of the Agreement, I do not find it is necessary to order that the Landlord provide the Tenants with another copy of the Agreement.

## *2. Are the Tenants entitled to reimbursement of the filing fee?*

The Tenants have been successful in this application. I grant the Tenants reimbursement of their filing fee under section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from June 2023 rent payable to the Landlord in full satisfaction of the filing fee awarded.

## Conclusion

Pursuant to sections 62(3) and 14(2) of the Act, I order that the fixed-term end date provided in section 2 of the parties' Agreement is July 1, 2024.

The Tenants' claim for reimbursement of the filing fee is granted. Pursuant to section 72(2)(a) of the Act, the Tenants are authorized to deduct a one-time amount of **\$100.00** from June 2023 rent payable to the Landlord.



The Tenants' remaining claim regarding utilities is settled as per the above recorded settlement.

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

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Residential Tenancy Branch