



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding ZESTAZY SERVICE LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **MNDCT, DRI, FFT**

### Introduction

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

1. An Order for compensation for a monetary loss or other money owed under Section 67 of the Act;
2. An Order to dispute a rent increase that is above the amount allowed by law under Section 43 of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord 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 she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence on February 16, 2023 by Canada Post registered mail (NoDRP package). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision.

The Landlord said she did not receive the NoDRP package, and she no longer resides at the address the Tenant sent it to. She said it was resent in March 2023 which she received. I find that the Landlord was sufficiently served with the NoDRP package on March 15, 2023 in accordance with Section 71(2)(b) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to an Order to dispute a rent increase that is above the amount allowed by law?
3. 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 Tenant testified that this tenancy began as a fixed term tenancy on August 30, 2020. Monthly rent was \$4,300.00 payable on the first day of each month. The Landlord purchased the property in May 2021. The fixed term ended on August 31, 2021, then the parties entered a second fixed term tenancy on September 1, 2021. The fixed term ended on August 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$4,600.00 payable on the first day of each month. A security deposit of \$2,300.00 was collected at the start of the tenancy in September 2021 and is still held by the Landlord.

The Tenant stated at the end of her first fixed term tenancy, the new Landlord and the Tenant entered into another fixed term tenancy with a new rent amount of \$4,600.00. The Landlord did not provide the Tenant with a notice of rent increase at least three months before the effective date of the rent increase. The Tenant testified that the Landlord was not wanting to rent to her anymore but with an increase in rent, the Landlord signed the tenancy agreement. The Tenant stated that the Landlord threatened her to take back the property using a Two Month's Notice for Landlord's Use.

The Tenant testified that she has been paying \$4,600.00 per month rent since September 2021.

The Tenant disputed this rent increase before, but the application was crossed with an application to dispute a Two Month Notice to end tenancy, so disputing the rent increase was dismissed with leave to re-apply. The Landlord was not successful with her notice to end. The previous decision numbers are included on the cover sheet of this decision.

The Tenant says that the Landlord intends to avoid the eviction penalty by including this term in her addendum to the tenancy agreement:

*5. When the landlord serves a legal notice to end the tenancy for the Landlord's Use of Property, the tenant agrees not to request the landlord to pay compensation equal to one month's rent, with respect to the waiver of rights addressed in the Residential Tenancy Act.*

The Landlord testified that she does not want to continue this tenancy. The Landlord says the Tenant is using her house to make money by renting out rooms to seven or eight students.

The Landlord said that the Tenant wanted a fixed term tenancy. She said the Tenant made the new agreement. The Landlord said she did not raise the rent, and the old tenancy agreement was terminated.

The Tenant stated the Landlord treats the house as an investment. She said the Landlord did not view the home before purchasing it. The Tenant said a land assembly sign was put up on the residential property, and she feels the Landlord just wants to deliver an empty house to a new owner.

The Tenant wants the return of 22 months extra rent where she has paid \$4,600.00 per month for rent, totalling \$6,600.00.

### 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.

Section 93 stipulates that the obligations of a landlord with respect to a security deposit run with the land or reversion. Thus, if the landlord changes, the new landlord retains these obligations as well as the other rights and obligations established under the Act.

Residential Tenancy Policy Guideline #30-Fixed Term Tenancies (PG#30) assists parties understand issues in fixed term tenancies. Relevant to this file, PG#30 states:

**D. RENEWING A FIXED TERM TENANCY AGREEMENT**

*A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent Increases are met.* (emphasis added)

Residential Tenancy Policy Guideline #37-Rent Increases (PG#37) is intended to help parties understand issues that are likely to be relevant to their claim. PG#37 states:

**A. LEGISLATIVE FRAMEWORK**

...

**3. Notice Requirement**

*The landlord must give the tenant a completed Notice of Rent Increase 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.*

...

**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 new Landlord took over the previous Landlord's obligations under this tenancy agreement pursuant to Section 93 of the Act. When the first fixed term ended on August 29, 2021, the parties entered into a new tenancy agreement. The Landlord included a \$300.00 increase in the rent amount owing under the new tenancy agreement. The Landlord did not serve a formal notice of rent increase on the Tenant three months before the new rent amount was expected to be due on September 1, 2021.

I find this rent increase was not permissible due to the lack of the notice requirement specified under Section 42(2) of the Act. The Tenant's application is granted. I grant the Tenant **\$6,600.00** compensation which represents the rental overpayment for 22 months from September 2021. For clarity going forward, I find the rental amount for this tenancy is \$4,300.00 per month.

The Tenant asked me to make a finding about a term in the addendum to the tenancy agreement as not being enforceable. The parties told me there is a claim being heard at the end of the month which is directly affected by this term. I make no finding on the enforceability of the term, as I do not want to bind the hands of the Arbitrator who will be hearing that claim.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee.

The Tenant's total monetary award is calculated as follows:

Item	Amount
Rental overpayment since September 2021	\$6,600.00
Application filing fee	\$100.00
Total Monetary Award:	\$6,700.00

### Conclusion

I grant a Monetary Order to the Tenant in the amount of \$6,700.00. 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: June 09, 2023

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Residential Tenancy Branch