



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, DRI, OLC, 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;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under Section 62(3) of the Act; and,
4. 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.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on April 13, 2023, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on April 18, 2023; and,

- the Landlord's evidence package personally served on May 8, 2023, the Tenant confirmed receipt, served on May 8, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

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;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under Section 62(3) of the Act; and,
4. Recovery of the application filing fee under Section 72 of the Act.

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 May 15, 2021. The parties entered a second fixed term tenancy which ended on May 15, 2023, then the tenancy continued on a month-to-month basis. Monthly rent is \$3,700.00 payable on the 15th according to the Tenant. A security deposit of \$1,700.00 was collected at the start of the tenancy and is still held by the Landlord.

Utilities:

The parties mutually agreed on a compensation amount for utilities already paid by the Tenant. The parties also mutually agreed that the utility bill split will be 75% paid by the Tenant and 25% paid by the Landlord. The Tenant will pay the whole utility bill, and will forward the bill to the Landlord, and the Landlord will promptly pay the Tenant 25% of the total bill.

Dispute rent increase:

In the 2021 tenancy agreement, the Tenant pre-paid \$40,800.00 in advance for the upcoming year's rent. This corresponded to a monthly rent of \$3,400.00 per month for rent. The tenancy agreement signed for that year had a one-page addendum attached. Section 5 of the addendum stated, "*On May 15, 2022, if the tenant and landlord mutually agree to extend the tenancy term, there will be a \$300 rent increase for the following year.*" The addendum was signed by both parties on April 24, 2021.

In the second year, on April 28, 2022, the Tenant signed a new fixed term tenancy agreement with the Landlord which stated they would pay \$3,700.00 per month for rent. the Tenant pre-paid \$44,000.00 in advance for the upcoming year's rent. The Tenant said the Landlord gave them \$400.00 off for paying in advance. The Tenant testified that the Landlord did not give her a formal rent increase notice, rather he just relied on Section 5 of the addendum attached to the 2021 tenancy agreement. The Tenant stated she signed that agreement because she said if she did not, she would have to vacate the rental unit.

The Tenant disputes this rent increase which was above the allowable limits imposed by the legislation.

This year, the Tenant testified that the Landlord wanted to rely on Section 6 of the addendum attached to the 2022 tenancy agreement which stated, "*On April 15, 2023, if the tenant and landlord mutually agree to extend the tenancy term, there will be a \$400/month rent increase for the following 1 year lease term (\$4100/month); if no agreement is reached then the tenant will vacate the house on May 15, 2023.*" The addendum was signed by both parties on April 18, 2022.

The Tenant applied for dispute resolution disputing this rent increase which is above the allowable limits imposed by the legislation.

The Landlord's agent explained that each of the fixed term tenancy agreements were brand new tenancy agreements between the parties. She refers to Section 13 of the Act and stated that the new terms were not amendments but rather whole new tenancy agreements. The rent increases were not normal rent increases.

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.

Settlement – Utilities:

Pursuant to Section 63 of the Act, the parties reached a settlement with compensation to the Tenant on utilities already paid by the Tenant, and how the parties will pay utility bills moving forward. The Parties agreed to settle this part of the claim as follows:

1. The Landlord agrees to compensate the Tenant **\$2,196.60** for utilities already paid by the Tenant;
2. The parties agree that the utility split will be 75% for the Tenant and 25% for the Landlord. The Tenant will fully pay the incoming utility bills, then she will forward the invoice to the Landlord, and the Landlord will promptly compensate the Tenant for 25% of the total utility bill;
3. The parties are ordered to comply with all these settlement terms; and,
4. These terms comprise the full aspects of utility payments during the tenancy.

Dispute rent increase:

Enforcing rights and obligations of landlords and tenants

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(3) *A term of a tenancy agreement is not enforceable if*

(a) *the term is inconsistent with this Act or the regulations,*

(b) *the term is unconscionable, or*

...

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:

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's 2021 addendum imposed a \$300.00 per month rental increase on the Tenant beginning in the 2022 year. The Tenant thought that if she did not sign the addendum, she would have to vacate the rental unit. The Landlord did not include a notice of rent increase three full months before the increase was to go into effect. I find this rent increase was not permissible due to the lack of the notice requirement. I grant the Tenant **\$3,200.00** (\$3,600.00-overpayment - \$400.00-reduction offered by Landlord) compensation which represents the net rental overpayment for 2022.

The Landlord's 2022 addendum imposed a \$400.00 per month rental increase on the Tenant. The addendum expressly stated that if no agreement was reached, then the Tenant will vacate the rental unit on May 15, 2023. Again, the Landlord did not include a notice of rent increase three full months before the increase was to go into effect. I find this rental increase attempt is unconscionable as it takes away the voluntary aspect of an agreed rent increase. Pursuant to Section 6(3)(b) of the Act, Section 6 of the 2022 tenancy agreement addendum is not enforceable.

There was no evidence provided whether the Tenant paid this rent increase since applying for dispute resolution, but if a rent increase was paid, the tenant may deduct the increase from rent or otherwise recover the increase pursuant to Section 43(5) of the Act. For clarity going forward, I find the rental amount for this tenancy is \$3,400.00 per month.

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)

I order the Landlord to comply with the Act and regulation about rent increases. PG#30 and PG#37 are easily accessible on the RTB website, and both guidelines assist parties with fixed term tenancies and rent increases. The Landlord must understand these topics for their tenancy agreement arrangements.

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
Settled utilities amount	\$2,196.60
Net rental overpayment in 2022	\$3,200.00
Application filing fee	\$100.00
Total Monetary Award:	\$5,496.60

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$5,496.60. 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 07, 2023

Residential Tenancy Branch