



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      TT: MNDCT, DRI-ARI-C, LAT, OLC, FFT  
                             TT: DRI, FFT

### Introduction

This hearing was convened as a result of the Tenant's Applications for Dispute Resolution, made on July 7 and September 1, 2023 (the "Applications"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to dispute a rent increase;
- a monetary order for compensation;
- an order authorizing the Tenant permission to change the locks to the rental unit;
- an order that the Landlord comply with the Act, tenancy agreement, or regulations; and
- an order granting recovery of the filing fee on both applications.

The parties attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenant's Applications and evidence. I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Landlord stated that they served the Tenant with their evidence by Canada Post Registered Mail on October 17, 2023. The Landlord provided the tracking number during the hearing in support. The tracking number has been recorded on the cover page of this Decision. The Tenant stated that they did not receive the Landlord's evidence. Pursuant to Section 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the Landlord's evidence five days later, on October 22, 2023.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. An Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

The Tenant submitted two separate Applications for Dispute Resolution containing a variety of different claims which are unrelated. At the start of the hearing, the Tenant was provided an opportunity to identify the most important claim that they wish to be addressed in this Decision. The Tenant identified their claim to dispute a rent increase was the most pressing matter. As such, I dismiss the other claims included in the Tenant's Application WITH leave to reapply.

The hearing continued based on the Tenant's claim to dispute a rent increased, which had been included in both of the Tenant's Applications.

### Issue(s) to be Decided

1. Is the Tenant entitled to compensation relating to the Landlord's rent increase, pursuant to Section 42, 43, and 67 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed that there is no written tenancy agreement between them and that their discussions surrounding rent payments have been verbal.

The Tenant is claiming that the Landlord raised the rent above the allowable amount. The Tenant stated that their tenancy started on June 1, 2018. The Tenant stated that initially there was two families residing in the rental unit paying \$1,300.00 per month. The Tenant stated that as of August 1, 2018 the other family vacated the rental unit and that the Tenant and his family remained in the rental unit. The Tenant stated that the parties agreed that the rent would be reduced to \$1,200.00 per month given there were less occupants residing in the rental unit. The Tenant provided several bank

statements showing the consistent rent payments each month in the amount of \$1,200.00 paid to the Landlord.

The Tenant stated that as of April 1, 2022 the Landlord raised the rent to \$1,450.00, which is above the allowable amount permitted. The Tenant stated that he has been paying the increased amount of rent up to and including November 2023. As such, the Tenant stated that he has been overpaying \$250.00 of rent for the past 20 months, which amounts to \$5,000.00 in overpayments. The Tenant provided bank statements confirming that they have been consistently paying \$1,450.00 each month since April 1, 2022.

The Landlord stated that the tenancy began on June 1, 2019. The Landlord stated that the agreed upon rent was \$1,400.00 due on the first day of each month. The Landlord stated that they provided the Tenant with a \$200.00 rent reduction during the Covid-19 pandemic and only charged the Tenant \$1,200.00 per month as of April 1, 2020. The Landlord stated that as of April 1, 2022 the Tenant began paying rent in the amount of \$1,450.00 on their own, without being asked by the Landlord.

The Landlord referred to a text message conversation between the parties where the Landlord stated that he reduced the rent from \$1,400.00 to \$1,200.00. The Tenant's response stated that the rent went from \$1,300.00 to \$1,200.00 after the other family moved out of the rental unit.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 42 of the *Act* outlines the allowable timing and notice of rent increases;

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.

Section 43 of the *Act* outlined the allowable amount of rent increase;

A landlord may impose a rent increase only up to the amount that is calculated in accordance with the Regulations, ordered by the Director, or agreed to by the tenant in writing.

The Residential Tenancy Policy Guideline 37 offers further clarity around Rent Increases;

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

In this case, I find that the parties provided evidence in support of the Tenant paying rent in the amount of \$1,200.00 per month until April 1, 2022 at which point they began paying \$1,450.00 each month up to and including November 2023.

While the Landlord stated that the parties verbally agreed upon rent amount was \$1,400.00, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has ever paid this amount to the Landlord, or that the Tenant was required to. Instead, I find that there is sufficient evidence to demonstrate that the Tenant had consistently paid \$1,200.00 each month to the Landlord. I find that the Landlord has provided insufficient evidence to demonstrate that the \$1,200.00 paid constituted a rent reduction from a different amount of rent due.

I find based on the evidence provided by the parties, that the Tenant has established a consistent pattern of paying rent in the amount of \$1,200.00 each month, which I find is more likely than not, the agreed upon rent owed by the Tenant to the Landlord each month. I find that the Tenant is required to pay rent to the Landlord in the amount of \$1,200.00 due on the first day of each month.

I accept that the parties agreed that the Tenant began paying rent in the amount of \$1,450.00 each month since April 1, 2022, which represents an over payment of \$250.00 each month for the past 20 months. I find that this is above the allowable amount and was not served pursuant to Section 43 of the Act. As such, I find that the Tenant has a current rent credit in the amount of \$5,000.00 (\$250.00 x 20 months).

I find that the Tenant has established and entitlement to a reimbursement in the amount of **\$5,000.00** for the overpayment of rent outlined above. As the Tenant was successful in their Applications, I find that they are entitled to the recovery of the **\$100.00** filing fee to make their Application. I decline to award the secondary filing fee as I find that the Tenant was not required to submit a secondary application given, they had already applied to dispute a rent increase in their initial application.

Pursuant to section 67 of the Act, I find the Tenant is entitled to a monetary order in the amount of \$5,100.00.

### Conclusion

The Tenant is required to pay rent in the amount of \$1,200.00 to the Landlord on or before the first day of each month.

The Tenant is granted a monetary order in the amount of \$5,100.00 which represents reimbursement for overpayment of rent and for the return of the filing fee. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: November 07, 2023

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Residential Tenancy Branch