



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNR, DRI

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and disputing a rent increase. The hearing was originally scheduled for February 16, 2024 and I adjourned it to February 28, 2024. My Interim Decision was provided to the parties.

On February 28, 2024 one of the named tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The landlord has not provided any evidentiary material, and the landlord's agent testified that it was too late for evidence to be uploaded when the landlord's agent learned of the hearing, but has received all of the tenant's evidence. Therefore, all evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that rent has been increased contrary to the law?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on August 1, 2022 and reverted to a month-to-month tenancy after July 31, 2023 and the tenants still reside in the

rental unit. The tenancy agreement specifies rent in the amount of \$3,795.00 payable on the 1<sup>st</sup> day of each month, and the final page of the tenancy agreement specifies an incentive of \$316.00 per month for the first year of the tenancy. The landlord's agent is not aware if there are any rental arrears at this point. At the outset of the tenancy the tenants paid a security deposit to the landlord in the amount of \$1,897.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite.

The landlord's agent further testified that on January 18, 2024 the tenant was served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by another agent of the landlord, by placing it in the mail slot. A copy of the Notice has been provided for this hearing and it is dated January 18, 2024 and contains an effective date of vacancy of January 28, 2024 for unpaid rent in the amount of \$3,870.00 that was due on December 1, 2023. The tenants paid the rent but not the increase.

Rent was paid for February, 2024 and no written notice was provided to the tenants indicating that the money was being received for use and occupancy only, or that it did not serve to reinstate the tenancy.

The tenancy agreement contains an incentive of \$316.00 per month deducted from the rent. The tenant was served with a Notice of Rent Increase, however a copy has not been provided for this hearing. The landlord's agent testified that the increase was based on the full amount of rent, and not including the incentive amount. The landlord's agent testified that the Notice of Rent Increase is dated April 24, 2023 and is effective August 1, 2023 in the amount of \$75.00. The last paragraph of the tenancy agreement states: 41 – "The tenant shall receive a rental credit of \$316 towards August 2022 to July 2023 (\$3,479). The tenant pays the August rent by a money order upon taking possession of the suite. The 11 months of rent of \$38,269 is due on Sep 1<sup>st</sup>." The tenants paid \$3,479.00 for the first 11 months.

**The tenant** testified that at the beginning, the tenant signed a tenancy agreement with another agent of the landlord, who cheated the tenant, letting the tenant give a deposit and said a discount would be provided the next year. However, the next day, she disappeared and there was no manager at all for the entire year for the whole building. It's in a terrible situation.

The tenant disputes being served with a Notice of Rent Increase, but received an email message, a copy of which has been provided for this hearing. It is dated January 9 and states: "You had a rent discount of \$316 for 1 year only which has expired and that is why

your rent went up to the original price. \$3795 is your rent. \$3534 is the discounted price. Please refer to your lease agreement as the discount should be on there. Your rent went up 2% in September 2023. 2% of \$3795 is \$75.90/  $\$3795 + \$75.90 = \$3870.90$ . Your rent is \$3870 now.” The tenants have also provided a copy of a cheque dated December 1, 2023 to the landlord in the amount of \$3,534.00 and another dated December 1, 2024 to the landlord in the amount of \$3,604.00. The tenant agreed to increase the rent to \$3,604.00, based on the rent of \$3,534.00 and the allowable 2% increase. The tenant talked to the other agent of the landlord, who didn’t say anything about it, but the tenant received the Notice to end the tenancy a few days later. The tenant never saw a manager.

#### SUBMISSIONS OF THE LANDLORD’S AGENT:

The discount had expired before the rent was increased, so the increase was based on the full amount of rent,, without considering the incentive amount.

#### SUBMISSIONS OF THE TENANTS:

The tenant did not get a Notice of Rent increase, only an email from another agent of the landlord. In December, 2023 she said there was an outstanding balance and asked the tenants to pay the amount, but didn’t mention what the amount was, and the tenants have no other information.

#### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have reviewed the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice), and I find that it is in the approved form and contains information required by the *Act*.

I have also reviewed the tenancy agreement. A landlord may not include in a tenancy agreement a term that is unconscionable, or oppressive to the tenant. The term 41 speaks of a credit of \$316.00 towards rent for August, 2022 to July, 2023. The amount of rent payable in paragraph 5 of the tenancy agreement is \$3,795.00 per month. Discounting \$316.00 equals \$3,479.00, which I find is the amount payable for the first 11 months of the tenancy agreement, and then the discount expires. I do not see that as unconscionable or oppressive to the tenants, but a discount offered to the end of the fixed term as an incentive rather than liquidated damages if the tenants don’t stay for the fixed term.

The landlord has not provided any evidentiary material, and the tenants dispute service of a Notice of Rent Increase. Any such Notice must be in the approved form, and the only evidence I have of the increase is the email from an agent of the landlord, which is not lawful. Therefore, I find that **rent is \$3,795.00 per month**, as per paragraph 5 of the tenancy agreement and the tenants were required to pay that amount commencing on August 1, 2023. The tenants have satisfied me that a Notice of Rent Increase in the approved form was not served, and the tenants' application disputing the rent increase is allowed.

The tenants have provided proof of paying \$3,534.00 on January 10, 2024 and \$3,604.00 on January 12, 2024. The Notice to end the tenancy states unpaid rent in the amount of \$3,870.00 that was due on December 1, 2023.

The landlord's agent testified that the landlord has collected rent from the tenants for February, 2024 rent, and the effective date of vacancy contained in the Notice is January 28, 2024. The landlord's agent testified that the landlord did not give the tenants a receipt or any other written material to indicate that the rent money was received for use and occupancy only and did not serve to reinstate the tenancy. Therefore I find that the landlord has effectively reinstated the tenancy. I cancel the Notice, and the tenancy continues until it has ended in accordance with the law.

Since the tenants have been successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in that amount in favour of the tenants as against the landlord, and I order that the tenants be permitted to reduce rent for a future month by that amount. The landlord must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, the tenants' application disputing a rent increase is hereby allowed, and I find that rent is \$3,795.00 per month until it has increased in accordance with the law.

The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated January 18, 2024 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: March 03, 2024

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Residential Tenancy Branch