



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNC, MNDCT, DRI, LRE, OLC, FFT / OPC-DR, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenants seek the following:

- An order cancelling a One Month Notice to End Tenancy for Cause (the Notice) under section 47(4) of the Act;
- A monetary order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 67 of the Act;
- To dispute a rental increase under section 43 of the Act;
- An order to suspend or set conditions on the Landlords' right of entry to the rental unit under section 70 of the Act;
- An order for the Landlords to comply with the Act, Regulation, or tenancy agreement under section 62 of the Act; and
- To recover the filing fee for their Application from the Landlords under section 72 of the Act.

The Landlords seek the following:

- An Order of Possession based on the Notice under sections 47 and 55 of the Act; and
- To recover the filing fee for their Application from the Tenants under section 72 of the Act.

Preliminary Issue – Vacant Rental unit

At the outset of the hearing the Tenants' occupation of the rental unit was discussed. The parties agreed that the Tenants vacated the rental unit on February 1, 2025. The Landlords confirmed they no longer sought an Order of Possession.

The Tenants also confirmed they no longer wished to dispute the Notice or obtain orders setting conditions on the Landlords' right to enter the rental unit, or for the Landlords to comply with the Act, Regulation or tenancy agreement.

Based on the above, I find the only claims raised in both Applications that remained live issues at the time of the hearing were the Tenants' monetary claim and their dispute of a rent increase. Therefore, only these issues will be adjudicated.

Since the remainder of the issues raised in the Applications are moot since the tenancy is over and the Tenants have vacated the rental unit, I exercise my authority under section 62(4)(b) of the Act to dismiss them without leave to reapply.

Service of Notice of Dispute Resolution Proceeding and Evidence

The Landlords acknowledged receipt of the Notice of Dispute Resolution Proceeding for the Tenants' Application. Given this, I find this record was served in accordance with section 89 of the Act.

The Landlords denied receiving the Tenants' evidence. I found the Tenants' testimony on the issue of service to be vague and unconvincing. Given this, I find the Tenants did not serve their evidence in accordance with section 88 of the Act and exclude it from consideration.

The Tenants did not serve the two requests to amend their Application to the Landlords, where they increased monetary amount sought. Given this, I reject the amendments and will adjudicate the dispute based on the claims raised initially in the Tenants' Application.

Issues to be Decided

- Are the Tenants entitled to an order regarding their dispute of a rent increase?
- Are the Tenants entitled to the requested compensation?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on May 1, 2024 for a fixed term of six months. The parties signed a written tenancy agreement.
- Under this agreement, rent was \$1,200.00 per month due on the first day of the month.
- A second tenancy agreement was signed, providing for a fixed term starting November 1, 2024. Under this agreement rent was \$1,300.00 due on the first day of the month.
- A security deposit of \$1,000.00 was paid by the Tenants on April 8, 2024 which the Landlords still hold.
- The Tenants vacated the rental unit on February 1, 2025.
- The rental unit is a suite within the residential property where the Landlords also reside. The rental unit has a separate entrance and the parties do not share kitchen or bathroom facilities.

The Tenants' claim is as follows.

The Landlords asked the Tenants to sign a new tenancy agreement effective November 1, 2024 where rent was increased by \$100.00 per month to \$1,300.00. They later came to believe this was not permitted since the rent increase took effect six months after the tenancy started. The Tenants seek \$300.00 in compensation for the rent increase paid for November 2024 to January 2025.

The Tenants also seek \$90.65 for lost income sustained by AK. Per the Tenants, MA entered the rental unit on January 3, 2025 and threatened them. The police were called and due to the stress, AK was unable to work the next day. The Tenant acknowledged the Landlords had provided notice of entry, but AK wanted to wait until their spouse was also present.

The Tenants also seek the return of the security deposit.

The Landlords responded as follows.

The rent increase was mutual, and the Tenants confirmed this by signing the new tenancy agreement.

Per the Landlords, they had provided notice of entry to the Tenants so they could inspect the rental unit. MA indicated they found the event stressful too and called the police themselves, who advised them to contact the Residential Tenancy Branch.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Rent increase

Part 3, section 41 of the Act, states that a landlord must not increase rent except in accordance with sections 42 and 43 of the Act. Section 42 of the Act only allows for a rent increase at least 12 months after the effective date of the last rent increase, which must also be served in the approved form and at least 3 months before the effective date of the increase.

Section 43 of the Act sets out that a landlord may only impose a rent increase by an amount calculated in accordance with the Regulation, for an amount agreed to by the tenant in writing, or as ordered by an arbitrator. Per section 22.2 of the Regulation, a landlord is permitted to impose a rent increase taking effect in 2024 of 3.5%.

Based on the evidence before me, I find the Landlords impose a rent increase 6 months after the tenancy began which is in breach of section 42(1)(a) of the Act. The amount is also in breach of the cap set by the Regulation.

Given the above, I grant the Tenants' request disputing the rent increase which I order of no force or effect. Under sections 65(1)(d) and 67 of the Act, I issue the Tenants a monetary order for \$300.00 accordingly.

Lost income

Section 7 of the Act provides the basis of claims for compensation relating to breaches of the Act or a tenancy agreement. Section 7(1) states that if a landlord or tenant does not comply with the Act, the Regulation, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 7(2) of the Act also requires the claiming party to take reasonable steps to minimize their loss.

In order to be successful in their claim, the Tenants must prove on a balance of probabilities that the Landlords breached the Act, Regulation, or tenancy agreement, that this breach caused the Tenants to incur a loss, and that they took reasonable steps to mitigate this loss.

As set out in Policy Guideline 16 - *Compensation for Damage or Loss*, a party seeking compensation should present compelling evidence of the value of the damage or loss in question.

I find there are a number of issues with the Tenants' claim. Firstly, I find the Tenants have failed to establish Landlords breached the Act. Given it was undisputed notice of entry had been provided I find no breach of section 29 of the Act regarding entry to the rental unit.

It is clear to me there had been friction between the parties and from the testimony of both parties I find both called the police after the incident on January 3, 2025. However, I find insufficient evidence to indicate the Landlords breached the Tenants' right to quiet enjoyment, as set out in section 28 of the Act, in relation to this incident.

Further, I find the Tenants failed to establish the loss claimed was in fact sustained as this was uncorroborated by written evidence.

Based on the above, I dismiss the Tenants' claim for compensation of \$90.65 for loss of income without leave to reapply.

Security deposit

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security

deposit within 15 days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

Given the Tenants vacated the rental unit on February 1, 2025 – 11 days before the hearing of this matter – I find the claim for the return of the security deposit is premature. I therefore dismiss it with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Filing fees

As the Tenants were at least partially successful in their Application, under section 72 of the Act I find they are entitled to recover \$50.00 of the filing fee from the Landlords. Since the Landlords Application was moot by the time of the hearing and was dismissed on this basis, they must bear the cost of the filing fee.

Conclusion

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlords. It is the Tenants' obligation to serve the Monetary Order on the Landlords. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Dispute of rent increase	\$300.00
Filing fee	\$50.00
Total	\$350.00

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: February 13, 2025

Residential Tenancy Branch