

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the Act for:

- a Monetary Order for unpaid rent under section 67 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

The Residential Tenancy Branch served the parties with the Proceeding Package following the unsuccessful facilitation held on May 22, 2025. Both parties attended the hearing and did not dispute service. I find that the parties were served in accordance with the Act.

Both parties confirmed receipt of the other's evidence. I find that the parties were served in accordance with the Act.

### **Issues to be Decided**

Are the Tenants entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Are the Tenants entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act?

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?

## Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agree that:

- this tenancy started in August of 2020
- this is a verbal tenancy with no written tenancy agreement
- the tenants paid a security deposit of \$525.00 to the Landlord on August 1, 2020
- this tenancy is set to end on June 30, 2025 pursuant to a settlement agreement

The file number for the settlement agreement is located on the cover page of this Decision.

Both parties agree that rent at the start of this tenancy was \$1,050.00 due on the first day of each month.

Both parties agree that in November of 2021 the Landlord verbally asked the Tenants to pay a \$100.00 rent increase starting December 1, 2021, making rent \$1,150.00 per month. Both parties agree that the Landlord did not serve the Tenants with RTB form #7, Notice of Rent increase or any other written notice of rent increase and that the parties did not sign a mutual rent increase agreement.

Both parties agree that in May 2023 the Landlord verbally asked the Tenants to pay a \$350.00 rent increase starting June 1, 2023, making rent \$1,500.00 per month. Both parties agree that the Landlord did not serve the Tenants with RTB form #7, Notice of Rent increase or any other written notice of rent increase and that the parties did not sign a mutual rent increase agreement.

Both parties agree that in December 2024 the Landlord verbally asked the Tenants to pay a \$100.00 rent increase starting January 1, 2025, making rent \$1,600.00 per month. Both parties agree that the Landlord did not serve the Tenants with RTB form #7, Notice of Rent increase or any other written notice of rent increase and that the parties did not sign a mutual rent increase agreement.

The Tenant is seeking to recover the following for the above rent increases:

### **December 2021 to May 2023 (18 months)**

- Overpayment per month:  $\$1,150 - \$1,050 = \$100$
- Total overpayment:

$$18 \times 100 = 1,800$$

**June 2023 to December 2024 (19 months)**

- Overpayment per month:  $\$1,500 - \$1,050 = \$450$
- Total overpayment:

$$19 \times 450 = 8,550$$

**January 2025 to February 2025 (2 months)**

- Overpayment per month:  $\$1,600 - \$1,050 = \$550$
- Total overpayment:

$$2 \times 550 = 1,100$$

**Total Overpayment:**  $\$1,800 + \$8,550 + \$1,100 = \$11,450$

The Landlord's agent (the Agent) testified that the Landlord disagrees with the monetary claim because the Tenants agreed to pay the rent increases. The Agent testified that all the agreements were verbal because the Landlord's English is not very strong. The Agent testified that the Tenants never disputed or disagreed with the rent increases until they were served with a notice to end tenancy.

The Tenants' advocate (the Advocate) submitted that the Tenants did not have a duty to dispute the rent increases and did not have a duty to mitigate damages under section 7(2) of the Act. The Advocate submitted that the Tenant's claim for compensation is made under section 43(5) of the Act not section 7(2) of the Act. The Advocate submitted that if section 7(2) of the Act is applied to this claim, an absurd result may occur as under section 43(5) of the Act the Tenant is permitted to deduct rental increases from rent that do not comply with Part 3 of the Act. The Advocate submitted that it would be absurd for the Tenant to be permitted to deduct the full amount of the illegal rent increases from rent under section 43(5) of the Act for the full amount of the overpayment, but for that amount to be reduced in an application before the Residential Tenancy Branch based on a failure to mitigate under section 7(2) of the Act. The Advocate submitted that the Tenant should not be penalized for submitting an application for dispute resolution rather than deducting from rent under section 43(5) of the Act.

Both parties agree that for March and April 2025, the Tenant attempted to pay the Landlord \$1,050.00 in cash each month but that the Landlord refused these payments as they were not the \$1,600.00 the Landlord believed he was owed. Both parties agree that as per the settlement agreement, no rent for May or June 2025 is payable. The Agent testified that the Landlord is only seeking \$1,500.00 per month for rent from January to April 2025 and has applied the extra \$100.00 paid per month for January

and February 2025 to rent owed for March and April 2025 and thus is seeking \$2,800.00 in unpaid rent for these months.

The Advocate testified that the Landlord waived their right to rent for March and April 2025 by refusing to accept the Tenant's rent payments of \$1,050.00 for March and April 2025. The Advocate argued in the alternative that if rent is owed for March and April 2025, the rent should be \$1,050.00 per month because the rent increases were not legal.

## **Analysis**

### Tenants' claim

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants have established a claim for damage or loss under the Act, regulation or tenancy agreement.

Part 3 of the Act governs rent increases. Section 41 of the Act establishes that a landlord must not increase rent except in accordance with Part 3 of the Act.

Section 42 of the Act states that the Landlord must use the form approved by the Residential Tenancy Branch and must give the Tenant at least 3 months advance notice of the rent increase.

Section 43 of the Act states that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations, (b) ordered by the director, or (c) agreed to by the tenant in writing.

Residential Tenancy Guide 37B states that a tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase. Agreements must:

- be in writing,
- clearly set out the rent increase (for example, the percentage increase and the amount in dollars),
- clearly set out any conditions for agreeing to the rent increase,
- be signed by the tenant, and
- include the date that the agreement was signed by the tenant.

I find that the verbal rent increases in which the Landlord raised the rent starting December 1, 2021, June 1, 2023 and January 1, 2025 did not meet the requirements for an agreement to raise the rent over the maximum annual rent increase as they were not in writing.

Residential Tenancy Guide 37B goes on to state that for agreed rent increases, a Notice of Rent Increase must be issued to the tenant three full month before the increase is to go into effect. Based on the testimony of both parties, I find that the Landlord did not provide the Tenants with the required 3-month notice of rent increase for the 2021, 2023 or 2025 rent increases. For this reason, in addition to the reasons set out above, the 2021, 2023, and 2025 rent increases are not compliant with the Act for an agreement to raise the rent to an amount greater than the maximum annual rent increase.

For the December 2021 rent increase, the June 2023 rent increase and the January 2025 rent increase, the Landlord did not use the form approved by the Residential Tenancy Branch, did not give the Tenant three month's advance notice, and the amount of the rent increases were not calculated in accordance with the Regulations. On December 1, 2021 there was a province wide freeze on rent increases in response to the COVID 19 pandemic. The Landlord at that time was not permitted to increase rent. The maximum increase for 2023 was 2%. The \$350.00 increase is more than 2% of rent. The maximum increase for 2023 is 3%. The \$100.00 increase is more than 3% of rent. For the above reasons, I find that the rent increases were not calculated in accordance with the Regulations and the required notice period was not provided.

I find that the 2021, 2023 and 2025 rent increases did not comply with section 43 of the Act and are therefore unenforceable. I find that the Landlord's breach of section 43 of the Act resulted in a calculable loss to the Tenants.

The Advocate argued that section 7(2) of the Act does not apply to the Tenants. I do not agree and find this argument without merit. Section 7(2) of the Act states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenants have claimed compensation for damages under section 67 of the Act, for breach of Part 3 of the Act. As stated in section 7(2) of the Act, the party who claims compensation for damage or loss that results from the other's noncompliance with the Act, must do whatever is reasonable to minimize the damage. Section 7(2) of the Act very clearly applies to the current claim as the Tenants are seeking compensation for the Landlord's breach of the Act. Section 43(5) of the Act states that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. I find that this section of the Act is not exempt from the application of section 7(2) of the Act. I find that had the legislature intended such an interpretation, it would have been made explicit.

I find that an absurdity does not result from the application of section 7(2) of the Act to section 43(5) of the Act. If a landlord does not agree with the tenant's deductions from rent, the Landlord may make an application for dispute resolution seeking a monetary order for unpaid rent from the RTB and the section 7(2) mitigation requirement would be addressed in such an application, as it is in this application.

The Tenant's claim is for all rent overpayments from December 2021 to the start of the tenancy. I find that such an award would be unfair in the circumstances, given the length of the tenancy and that the Landlord had no prior warning during the tenancy that the Tenant might seek recovery of the overpayments.

The Tenants chose to accept the 2021, 2023 and 2025 rent increases rather than make an application to dispute them or otherwise inform the Landlord that they did not agree with them. As the Tenants did not dispute the rent increases or otherwise inform the Landlord that they did not agree with them, the Tenants did not minimize their loss as required by section 7(2) of the Act.

I find that it would be unjust to order that the Landlord repay rent increased from 2021 given that the Landlord had no indication from the Tenants during the tenancy that they would seek such a remedy. For failure to mitigate, I limit the Tenants' claim of rent increases to two years.

I find that two years is an appropriate period of time to order that the Landlord repay to the Tenant the rent overpayment as this time frame balances the rights of the Tenants with the principles of equity and fairness for the Landlord. I have arrived at two years as being appropriate because that is the limitation period set for making a claim in section 60(1) of the Act. Section 60(1) indicates that two years is fair period of time where parties can expect that a claim might be made, and I find that in this case two years is a fair period of time to limit the Tenants' claim. I find that the Tenants are entitled to compensation for over payment of rent from March 2023 to February 2025.

As I have found that the 2021, 2023 and 2025 rent increases were not made in accordance with Part 3 of the Act, I find that they are of no force or effect. Therefore, I find that \$1,050.00 is the rate of rent that the Tenants ought to have been paying and is the current rental rate. I calculate the rent overpayments for 2 years between March 2023 and February 2025 (the last month rent was paid) as follows:

<b>Time Period</b>	<b>Monthly rent overpayment</b>	<b>Number of months</b>	<b>Total overpayment</b>
March 2023 – May 2023	\$100.00	3	\$300.00
June 2023 – December 2024	\$450.00	19	\$8,550.00
January 2025- February 2025	\$550.00	2	\$1,100.00
<b>Total</b>			<b>\$9,950.00</b>

Therefore, I find the Tenants are entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$9,950.00

#### Landlord's Claim

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

I find that rent for March and April 2025 was \$1,050.00 per month and that the Tenant is obligated to pay this rent to the Landlord, in accordance with section 26(1) of the Act. I find that in refusing to accept the rent payments from the Tenants, the Landlords did not waive their right to receive rent.

Residential Tenancy Policy Guideline #11 states that there are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights.

I find that there is no evidence of express waiver between the parties as there is no evidence that the Landlord ever informed the Tenants that rent was not payable for March or April 2025. I find that implied waiver has not arisen because when the rent payments were rejected, the Landlord rejected them because they wanted more rent. As the Landlord clearly stated that they wanted more rent paid for March and April 2025, it cannot be said that their conduct showed an intention to waive their right to collect rent.

I find that the Landlord is entitled to a Monetary Order for unpaid rent for March and April 2025 totalling \$2,100.00.

#### **Conclusion**

I grant the Tenants a Monetary Order in the amount of **\$7,850.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for the Tenants for damage and compensation under section 67 of the Act	\$9,950.00
Less a Monetary Order for the Landlords for unpaid rent	-\$2,100.00
<b>Total Amount</b>	<b>\$7,850.00</b>

The Tenants are provided with this Order in the above terms and 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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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 23, 2025

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Residential Tenancy Branch