



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, OLC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order regarding a disputed additional rent increase pursuant to section 43.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 11:18 a.m. in order to enable the tenant to connect to this scheduled 11:00 a.m. hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that he sent the landlord a registered letter on November 3, 2011 containing a copy of his dispute resolution hearing package for the originally scheduled hearing on January 19, 2012. The tenant testified that he called the Residential Tenancy Branch (RTB) on November 10, 2011 to request an earlier hearing date as the landlord was attempting to raise his rent and end his tenancy. The tenant testified that he was advised by the RTB that it would reschedule this hearing to November 30, 2011 at 11:00 a.m. The tenant testified that the RTB staff member told him that the RTB would be sending copies of the rescheduled hearing notice to him and to the landlord. He said that he scanned a copy of the rescheduled hearing notice and sent this by email to the landlord.

My check of the RTB's records confirmed that an RTB staff member sent rescheduled hearing letters to the tenant and the landlord on November 10, 2011. These notices identified new participant codes, dates and times for the rescheduled hearing. The RTB staff member also spoke with both the tenant and the landlord on the telephone and provided them with this information regarding the rescheduled hearing.

After this hearing concluded and before I issued my decision, the landlord sent a fax to the RTB to report that she had been unable to connect with the 11:00 a.m. hearing

although she had called into the toll-free number and entered the 9022171# access code. She stated that she did not receive a confirming letter from the RTB regarding this hearing after she spoke with one of the RTB's staff members. She stated that she was placed on hold for 45 minutes after trying to connect with the hearing at 11:00 a.m. She stated that she needed her house back and that the tenant was causing damage which must end.

In reviewing the landlord's fax, I note that the landlord called into the access code cited on the original hearing notice scheduled for January 19, 2012. This was not the correct access code for the rescheduled hearing provided to the landlord by telephone and letter by the RTB, and by the tenant in the scanned copy of the rescheduled hearing notice sent by the tenant by email. I find that the landlord did not exercise proper care and attention to the revised access code for the rescheduled hearing and, as a result, she failed to connect with this hearing at the appointed time for that hearing.

Based on the tenant's testimony and the information regarding the RTB staff member's handling of the rescheduled hearing notices, I am satisfied that the landlord was properly served with notice of the tenant's application and the rescheduled hearing.

#### Issues(s) to be Decided

Is the landlord entitled to an additional rent increase? Should an order or orders be issued to the landlord requiring the landlord to comply with the *Act*? Is the tenant entitled to recovery of his filing fee from the landlord?

#### Background and Evidence

The tenant entered into written evidence a copy of the residential tenancy agreement for this tenancy. According to this agreement, this tenancy commenced as a six-month fixed term tenancy on May 1, 2011. The tenancy agreement provided two boxes to check to choose whether the tenancy ended on the end date of the fixed term tenancy (i.e., November 1, 2011) or whether it continued on a month-to-month basis or another fixed length term. Although the parties initialled a box showing that the tenancy ends and the tenant must move out at the end of the tenancy, the checked box established that the tenancy was to continue on a month-to-month basis. On this basis and because any ambiguity in the terms of the tenancy agreement are to be interpreted in favour of the party who did **not** produce the agreement (in this case the tenant), I find that the tenancy agreement called for the tenancy to continue on a month-to-month basis at the end of the initial fixed term.

Monthly rent according to the tenancy agreement was set at \$900.00 including all utilities, payable in advance on the first of each month. The tenant paid a \$450.00 security deposit on or about May 1, 2011, an amount still held by the landlord.

The tenant entered oral and written evidence that the landlord attempted to increase his monthly rent by way of emails from the all-inclusive amount of \$900.00 to \$1,200.00 including all utilities as of November 1, 2011. Alternatively, the landlord was seeking a monthly payment of \$950.00, but allowing the landlord to have partial use of the premises on weekends and holidays as she chooses. Alternatively, the landlord offered to let the tenant remain in the rental unit for November 2011 for \$950.00, but vacate the premises by 12:00 p.m. on November 30, 2011. The tenant applied to dispute the additional rent increase sought by the landlord in excess of increases allowed under the *Act*.

The tenant also applied to obtain orders requiring the landlord to comply with the *Act*. He testified that the landlord left him a handwritten notice to end this tenancy by illegally entering his rental unit and placing the notice on his kitchen table. He also asked for an order requiring the landlord to follow the *Act* in requesting rent increases and in issuing notices to end tenancy. He testified that the landlord has advised him that she intends to end his tenancy on November 30, 2011, despite her failure to follow any of the legal requirements to do so as set out in the *Act*.

### Analysis

As the landlord seems to be unaware of the statutory requirements regarding increases to rent, I have outlined relevant provisions from the *Act* which read in part as follows:

#### ***Rent increases***

**41** *A landlord must not increase rent except in accordance with this Part.*

#### ***Timing and notice of rent increases***

**42** (1) *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 established under the tenancy agreement;...*

*(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.*

**Amount of rent increase**

**43** (1) *A landlord may impose a rent increase only up to the amount*

*(a) calculated in accordance with the regulations,*

*(b) ordered by the director on an application under subsection (3), or*

*(c) agreed to by the tenant in writing...*

The *Act* clearly states that an increase other than that calculated in accordance with the *Regulations* for which proper written notice has been given, must be agreed to in writing by the tenants. The landlord would be allowed to seek an increase in rent by the permissible amount set out in the *Regulations* on or after May 1, 2012, twelve months after this tenancy commenced. There is no evidence that the landlord is currently allowed to seek an increase in the tenant's rent or that the landlord has taken the steps required to increase the tenant's rent using the proper forms for doing so. As the landlord has not taken the steps required to increase the tenant's monthly rent, I order that the tenant's monthly rent remain at \$900.00.

The tenant has provided undisputed oral and written evidence, the latter of which included emails from the landlord, that confirm the tenant's assertion that the landlord is attempting to evict the tenant with little or no regard to the *Act*.

Section 52 of the *Act* reads in part as follows:

52 *In order to be effective, a notice to end tenancy must be in writing and must...*

*(a) be signed and dated by the landlord or tenant giving the notice,*

*(b) give the address of the rental unit,*

*(c) state the effective date of the notice,*

*(d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form.*

In addition, any notice to end tenancy must be served in accordance with the *Act*. A landlord cannot provide service to a tenant by illegally entering a rental unit and placing a handwritten note on a tenant's table.

As the landlord seems to have minimal understanding of the rights and obligations of landlords and tenants in this province, I am attaching to the landlord's copy of this

decision a copy of **A Guide for Landlords and Tenants in British Columbia**, a document prepared by the RTB.

Since the parties have not provided me with any valid copy of a Notice to End Tenancy, there was no reason for the tenant to apply for dispute resolution to cancel any Notice to End Tenancy issued to date by the landlord. However, as the tenant remains concerned that the landlord has expressed her intent to end his tenancy without adhering to the *Act*, I order that this tenancy continues.

As the tenant has testified that the landlord entered the rental unit without providing the required notice to do so, I order that the landlord is only able to access the rental premises in accordance with the following provisions of section 29 of the *Act*.

**Landlord's right to enter rental unit restricted**

**29** (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

*(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

*(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

*(i) the purpose for entering, which must be reasonable;*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;...*

*(d) the landlord has an order of the director authorizing the entry;*

*(e) the tenant has abandoned the rental unit;*

*(f) an emergency exists and the entry is necessary to protect life or property.*

*(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

If the landlord fails to comply with this order, the tenant is at liberty to apply for a monetary award to reduce monthly rent for his loss of quiet enjoyment of the rental premises.

I find that the tenant is entitled to recover his \$50.00 filing fee from the landlord in accordance with section 72 of the *Act*. I allow the tenant to reduce his next monthly rent payment by \$50.00 to recover this filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the landlord's additional rent increase and set the monthly rent for this tenancy at \$900.00. I find that this tenancy continues. I order the landlord to comply with the provisions of the *Act* requiring her to provide proper notice of any Notice to End Tenancy using the approved forms and serving documents in accordance with the *Act*. I order the landlord to comply with section 29 of the *Act* with respect to any access that she requests to the rental unit. I order the tenant to recover his \$50.00 filing fee for this application from the landlord by reducing his next monthly rent payment by \$50.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 30, 2011

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Residential Tenancy Branch