



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, OLC, RR, MNDCT, FFT

### Introduction

On October 7, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to dispute a rent increase pursuant to Section 41 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*

The Tenants attended the hearing and the Landlord attended the hearing as well, with K.L. All parties provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package and evidence to the Landlord and the Landlord confirmed that she received this package. The Landlord advised that she served her evidence to the Tenants and the Tenants confirmed receipt of it. Based on the undisputed testimony, I am satisfied of service of the documents and that the hearing could proceed accordingly. I have accepted and considered the accepted evidence when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenants’ Application with respect to the tenancy agreement and the rent increase, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Tenants entitled to an Order that the Landlord comply with the *Act*?
- Was a rent increase implemented contrary to the *Act*?
- Are the Tenants entitled to a rent reduction for overpayment of rent due to an illegal rent increase?
- Are the Tenants entitled to compensation?
- Are the Tenants entitled to an Order that the Landlord comply with the *Act*?
- Are the Tenants entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on March 1, 2017 as a fixed term tenancy for three months, ending on May 31, 2017. This tenancy agreement included a vacate clause at the end of the three-month agreement. Rent was established at \$3,780.00 per month, due on the first of each month. A security deposit of \$1,940.00 was paid.

The Tenants submitted into documentary evidence a copy of an Addendum that was presented to them by the Landlord, which they signed on May 3, 2017. This Addendum, drawn up by the Landlord, stated that the parties agreed to extend the tenancy from June 1, 2017 to June 30, 2018, that rent from June 1, 2017 to October 31, 2017 would be increased to \$4,000.00 per month, and that rent from November 1, 2017 to May 31, 2018 would be decreased to \$3,780.00 per month. Furthermore, the Addendum indicated that “Should the tenancy be renewed for an additional year at the end of June 2018, the tenant agrees to a 3.5% increase for the above two periods for the following year (June 2018 – May 31, 2019).”

The Tenants stated that the rent increase in this Addendum was illegal as this does not comply with the *Act* in terms of timing or means of notification. Further, it is the Tenants’ position that the Addendum does not constitute a new tenancy agreement and as such,

their tenancy has continued as a month to month tenancy after the original three-month fixed term ended.

The Tenants submitted a second Addendum into evidence that was drawn up by the Landlord and provided to them on September 30, 2018. It stated that the parties agreed to extend the tenancy from June 1, 2018 to May 1, 2019, that rent from October 1, 2018 to June 1, 2019 would be increased to \$4,140.00 per month, and that rent from November 1, 2018 to May 31, 2019 would be decreased to \$3,912.00 per month. Furthermore, this second Addendum indicated that "Should the tenancy be renewed for an additional year at the end of June 2018, the tenant agrees to a 3.5% increase for the above two periods for the following year (June 1, 2018 – May 1, 2019) should the parties agree to a lease renewal on April 31, 2019." The Tenants did not sign this second Addendum, however.

The Tenants stated that the rent increase in this second Addendum was illegal as well as it does not comply with the *Act* in terms of timing or means of notification. The Tenants submit that the Addendums do not constitute amendments to the tenancy agreement, that the tenancy has continued as a month to month tenancy, and as such, there is no effective vacate clause that is enforceable.

The Landlord submitted that the Addendums they provided to the Tenants are actually "four fixed term leases" and that the Tenants had "mutually signed and agreed to the Addendum, from May 3, 2017 till September 30, 2018!" She stated that the Tenants have signed and acknowledged these "legally binding agreement[s]" and that the Addendums are "in full compliance with the Act and Regulations" and are "in full compliance with the spirit of the Act...". She advised that her rationale for the fluctuating rent amounts was due to "peak" and "shoulder" rental seasons.

She advised that these fixed term leases allowed for the Tenants to end the tenancy after each fixed term or allowed the Landlord the ability to have her mother move into the rental unit after each fixed term, if necessary, in anticipation of her declining health. She advised that due to the signed Addendum, the tenancy is not a month to month tenancy currently and the vacate clause is still enforceable.

The Tenants submitted a monetary order worksheet seeking compensation in the amount of **\$2,200.00** for ten months of an illegal rent increase, **\$360.00** for the over payment of November 2018 rent, and **\$1,800.00** for the value of parking that was removed from the original tenancy agreement.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 13 of the *Act* outlines the requirements of what must be included in a tenancy agreement. Furthermore, Section 14 of the *Act* states that a tenancy agreement may be amended with the agreement of both parties; however, this does not apply to rent increases.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if they comply with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlord cannot impose a rent increase for at least 12 months after the date on which the Tenants' rent was first payable for the rental unit or the effective date of the last rent increase made in accordance with this *Act*. As well, the Landlord must give the Tenants notice of a rent increase at least 3 months before the effective date of the increase, and this notice must be in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenants in writing.

In addition, I find it important to note that Policy Guideline # 37 outlines the following with respect to allowable 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.

When reviewing this file, the crux of the matter is whether or not the Addendum that the Tenants signed constitutes a new tenancy agreement. According to Black's Law, an addendum is defined as "Something to be added, esp. to a document; a supplement." This would be consistent with my view that an addendum is not a standalone document, but a document that would add terms, in this case, to the existing tenancy agreement. However, while it is the Landlord's belief that her Addendum, signed by her on May 2, 2017, is in fact two new tenancy agreements for fixed lengths of time, I do not find that the Addendum complies with the requirements of Section 13 to be considered two, new standalone tenancy agreements. Furthermore, even if this Addendum were to be considered new tenancy agreements, I do not find it fair for the Tenants to be expected to sign and agree to one fixed term tenancy and pre-maturely sign one future fixed term tenancy.

Therefore, with respect to the Landlord's Addendums, it is my opinion that these documents are an attempt by the Landlord to contract outside of the *Act*. Pursuant to Section 5 of the *Act*, any attempts to avoid or contract outside of the *Act* will be found to be of no effect. As such, I do not find that the Landlord's Addendums are new tenancy agreements. Moreover, I am satisfied that the only tenancy agreement that binds the parties is the tenancy agreement signed February 16, 2017. As no new tenancy agreement was signed after the expiration of the original fixed term concluded on May 31, 2017, I find that this tenancy continued as a month to month tenancy after May 31, 2017, under the same terms.

Regarding the Landlord's rent increases, I find it important to note that the earliest a Landlord can impose a rent increase is 12 months after the rent was first payable. Furthermore, the *Act* requires that in order to do so, the Landlord must also give the Tenants a notice of a rent increase at least 3 months before the effective date of the increase and use the approved form. As I am satisfied that the Addendums are attempts to contract outside the *Act*, I find that the Landlord's attempts to change the total rent owing to amount to an illegal rent increase. This, of course, is not withstanding the Landlord's attempt to increase rent within 12 months of when rent was first payable, by her not providing the Tenants with sufficient notice, and by her not using the approved form. Consequently, I find that the correct amount of rent owing per month is established by the tenancy agreement that was signed on February 16, 2017 in the amount of **\$3,780.00**, and that this amount is how much the Tenants owe per month for the duration of their tenancy to date. As an aside, to increase the rent at any point going forward, the Landlord must comply with the requirements of the applicable Sections of the *Act*.

Accordingly, to address the Tenants' claims of overpayment of rent due to an illegal rent increase, the Tenants submitted that they are seeking compensation in the amount of **\$2,200.00** for ten months of an illegal rent increase. Based on the Addendum of May 2, 2017, I can reasonably infer that the Tenants paid the illegal rent increase of \$4,000.00 for the five months from June 2017 to October 2017. However, when reviewing the evidence submitted, it is not clear to me where the other five months of overpayments occurred. I note that there is a spreadsheet from May 1, 2018 to December 1, 2018 that has been submitted into documentary evidence showing rent payments of \$4,000.00 for some months. Yet, this spreadsheet does also indicate some rent payments of less than that as well.

During the hearing, the Tenants advised that they would be comfortable if I made the correct calculation for any potential overpayments of rent. However, as the burden of proof lays on the party making the Application to clearly outline their claim, and as I am not able to audit the accuracy of the rental payment history between the parties, I am not satisfied that the Tenants have sufficiently substantiated that they have made over payments for a total of ten months. As such, I am satisfied that the Tenants have established a monetary award of five months of overpayment of rent at \$220.00 per month, totaling **\$1,100.00**.

Furthermore, I am also satisfied from the evidence of a cheque dated October 11, 2018 that the Tenants paid \$4,140.00 for November 2018 rent. As the rent owing is \$3,780.00 per month, I am satisfied by this evidence that the Tenants made an overpayment of rent for November 2018 of \$360.00. Therefore, I am satisfied that the Tenants have established a monetary award of **\$360.00** for November 2018.

With respect to the Tenants' claim for \$1,800.00 for the value of parking that was removed from the original tenancy agreement, when I read the tenancy agreement signed February 15, 2017, I interpret that one parking spot was available for the Tenants' use, if they so choose, but at a cost of \$100.00 per month. As such, I am not satisfied that the Tenants have suffered a loss of \$100.00 per month for 18 months as they claim, and I dismiss this in its entirety.

Finally, regarding the parties' dispute with respect to the validity of a vacate clause, at the time the original tenancy agreement was signed on February 15, 2017, vacate clauses were enforceable. However, as I am satisfied that this tenancy has continued as a month-to-month tenancy after the end of the three-month fixed term agreement

ended, the Landlord must comply with the appropriate provisions in the *Act* should she wish to end the tenancy.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenants**

Rent overpayment for five months	\$1,100.00
Rent overpayment for November 2018	\$360.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,560.00</b>

Pursuant to Section 72 of the *Act*, I allow the Tenants to withhold **\$1,560.00** from a future month's rent.

Conclusion

The Tenants' Application for monetary compensation is granted and the Tenants are permitted to withhold **\$1,560.00** from a future month's rent.

The Tenants' Application for an Order for the Landlord to comply with the *Act* is granted. The Landlord must comply with the terms of the original tenancy agreement signed on February 15, 2017 and must comply with the applicable Sections of the *Act* and Regulations with respect to implementing future, legal rent increases.

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: December 14, 2018

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Residential Tenancy Branch