



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRT, MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 4, 2022, wherein the Tenant sought monetary compensation from the Landlord in the amount of \$18,300.75 representing compensation for money paid towards alleged illegal rent increases, the cost of repairs and maintenance to the rental unit, and recovery of the filing fee.

The hearing of the Tenant's Application was initially scheduled on December 5, 2022 and continued on May 30, 2023 and September 21, 2023. Both parties called into the first hearing as did the Landlord's son, B.P. When the hearing reconvened on May 30, 2023 and September 21, 2023, only the Tenant and B.P. called in.

Those in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

### *Preliminary Matter—Adjournment and Exchange of Evidence*

The original hearing date was adjourned, by my Interim Decision dated December 5, 2022, due to service issues. This Decision must be read in conjunction with that Interim Decision. To facilitate the timely exchange of information, I made the following orders:

1. By no later than December 20, 2022 the Tenant shall serve the Tenant's Application for Dispute Resolution and all evidence in support of the claim on the Landlord.

2. By no later than January 10, 2023 the Landlord shall serve on the Tenant, and upload to the Residential Tenancy Branch online service portal, any and all evidence upon which the Landlord intends to rely in response to the Tenant's claim.
3. By no later than January 24, 2023 the Tenant shall serve on the Landlord, and upload to the Residential Tenancy Branch online service portal, any and all evidence upon which the Tenant intends to rely in reply to the Landlord's response evidence.

When the hearing reconvened the Tenant stated that he received the Landlord's evidence on January 16, 2023, 6 days after the above deadline. The Tenant further stated that the package received by the Tenant did not include all emails from 2020.

As discussed during the September 21, 2023 hearing, as the applicant, the Tenant was expected to submit any and all evidence in support of his claim. The emails from 2020 relate to discussions he had with the Landlord regarding the proposed rent increase and with proper planning should have been included in the Tenants' original application package. The Tenant alleged the Landlord failed to submit *all* relevant emails, particularly emails from the Tenant where he expressed his concerns about the proposed rent increase and the fact he felt pressured to "agree" to the rent increase.

As the hearing completed in September 2023, I find the Tenant was afforded sufficient opportunity to respond to the Landlord's evidence such that there was limited prejudice to the Tenant. The Tenant was able to provide his testimony regarding these emails and make submissions as to the enforceability of any agreement regarding the rent increase. For these reasons I accepted the Landlord's late evidence.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed

their understanding of this requirement and further confirmed they were not making recordings of the hearing.

#### Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on September 21, 2023. This Decision was rendered on October 30, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

#### Issues to be Decided

1. Is the Tenant entitled to monetary compensation for an overpayment of rent?
2. Is the Tenant entitled to monetary compensation for the cost of repairs and maintenance to the rental unit?
3. Should the Tenant recover the filing fee?

#### Background Evidence

In support of his claim the Tenant testified as follows. He confirmed that he moved into the rental unit in 2017. On June 1, 2017, he agreed to pay \$4,000.00 per month and signed a new tenancy agreement.

In terms of the \$14,458.00 claimed for an illegal rent increase the Tenant testified as follows:

- On June 1, 2020 the Landlord served a Notice of Rent increase indicating rent was to be increased as of October 1, 2020 from \$4,000.00 to \$5,200.00. The Tenant stated that he received the form, but it was during Covid-19, they had animals and they could not find another place to live. The Tenant claimed that when he spoke to the Landlord about the illegal rent the Landlord told him that they could just move out. He also stated that he was afraid to raise this issue and jeopardize his tenancy.

- The following year in September of 2021 the Landlord increased the rent from \$5,200.00 to \$5,500.00 per month. The Tenant made one payment of \$5,500.00 for the September 2021 rent (a copy of the rent receipt was provided in evidence before me)
- The tenancy ended October 2021.

The Tenant calculated the overpayment as follows:

- 2.6% was the allowable rent increase in 2020, such that he paid \$1,096.00 per month over and above what he should have paid for 12 months which results in \$13,152.00 in overpayment for 2020.
- The next rent increase from \$5,200.00 to \$5,500.00. The maximum rent increase that year was 0% (as it was during the rent freeze imposed during the Covid 19 pandemic) such that he calculated he paid \$1,396.00 over and above what he should have paid for September 2021.
- He submitted that the total of the two years is a \$14,458.00 overpayment.

#### *Tree Removal*

The Tenants also sought reimbursement for amounts paid to have a tree removed from the property. The Tenant testified that a tree fell on the back property and caught in another tree on October 14, 2020. The Tenant told the Landlord and the Landlord responded that as the Tenant had a chainsaw he could do it himself. The Tenant was not comfortable doing so and hired a professional tree service company and they charged the Tenant \$500.00 to remove the tree. Copies of the receipt were provided in evidence before me. He testified that his communication with the Landlord was by text at the time and because of how long ago it was he was not able to provide those text messages.

#### *Washing Machine Replacement*

The Tenant claimed that on January 24, 2021 he had to replace the broken washing machine. The Tenant stated that there wasn't a lot of communication with the Landlord at that time. He claimed that he tried to talk to them about the washing machine and a rat infestation and the Landlord told them to find another place.

The Tenant then purchased a washing machine and left it in the rental unit when they left. He stated that they left it as they didn't have anywhere to put it because their new

place had a washing machine. The Tenant further stated that the Landlord did not offer to reimburse them even though they were well aware it was replaced because the old one was disposed of at the Landlord's personal property.

#### *Roof and Soffit Repairs and cost to Restore Power*

The Tenant testified that a tree fell on the rental home and on a power line during a storm on January 13, 2021. The Tenant claimed he paid for the repairs to the roof and soffits as well as the charges to have the power restored. In support the Tenant attached receipts and photos. The Tenant stated that the Landlord knew about this incident because the Landlord came by the property on January 13, 2021 when they saw emergency personnel.

The Tenant stated that he did not give the Landlord the receipts at the time as he was worried about "causing drama" and being evicted. The Tenant stated that he knew they had two years to make a claim and decided to wait until his tenancy ended. He stated that the Landlord would have seen the roof and soffit damage as it was right in the front yard.

#### *Pest Control*

In terms of pest control, the Tenant testified that October 27, 2020 the Tenants called emergency pest control as rats entered the house through a hole cut to accommodate an oversized hot water tank. He claimed that three months of pest control was required. The Tenant testified that the Landlords told the Tenants to find another place to live when this was brought to their attention.

#### *Landlord's Response*

In response to the Tenants' claims B.P. testified as follows.

In terms of the rent increase, B.P. stated that when the Tenant started growing medical cannabis in the cabin, they requested that the Tenant pay \$5,200.00 because of the change of use, as well as the Tenants requested baseboard heaters and other renovations to the unit. B.P. stated that they discussed this with the Tenant and he agreed to pay the \$5,200.00 in recognition of these changes. B.P. stated that he did the notice of rent increase and the Tenant indicated his agreement by signing it on the bottom. A copy of the Notice of Rent Increase was provided in evidence.

B.P. also stated that there was an email from the Tenant dated June 6, 2020 wherein the Tenant stated that he was agreeable to paying the increased rent and in which the Tenant set out his requested improvements which the Landlord completed as a result of the agreement regarding increased rent (installation of baseboard heaters, repairs to the deck, installation of privacy fencing/trees, etc.) A copy of that email was provided in evidence before me.

In terms of the second increase to \$5,200.00 to \$5,500.00, B.P. testified that the Tenant also agreed to this figure again. He stated that these were the numbers they all agreed to at the beginning where the rent was initially \$5,200.00 to \$5,500.00 and then was to increase \$6,000.00. He noted that this was discussed prior to the initial term ending and was discussed even before the tenancy began as indicated in emails between the parties at the time. The Landlord noted that at that time the Tenant also added new occupants, his girlfriend and his parents. The Landlord stated that they discussed this request via email and the Tenant again agreed to the increase.

#### Tenants' Reply

The Tenant stated that it was always his intention to rent the full property. In May of 2017 the Landlord evicted the tenant in the cottage and the Tenant then rented the full property including the cottage. At that time his rent went up to \$4,000.00. The Tenant clarified that he did not take issue with this rent increase, but the amounts raised from that date as the rent had already been increased in 2017 to allow the Tenant to use the cottage for cultivating cannabis.

#### Analysis

##### *Rent Increase*

The Tenant submitted that he should be reimbursed any rent paid over and above the allowable amount during the tenancy.

A Landlord may not increase rent unless the rent increase is done in accordance with the *Residential Tenancy Act*, and the *Residential Tenancy Regulation*.

Section 43 of the Act provides as follows:

**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.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4) [Repealed 2006-35-66.]
- (5) 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.

The evidence confirms the Landlord issued a Notice of Rent Increase in the approved form in June of 2020 for an October 2020 rent increase from \$4,000.00 to \$5,200.00 as required by section 42(3) of the *Act*.

The amount of the increases was clearly well over the amounts permitted by the Regulations. However, the Tenant specifically agreed to this increase and confirmed his agreement by signing the Notice of Rent Increase.

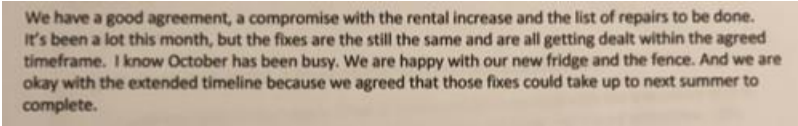
The Tenant argues that he should not be bound by this agreement as he was afraid of being evicted.

*Residential Tenancy Policy Guideline 37--Rent Increases* provides that “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”. However, in this case, not only did the Tenant pay the increased rent when requested, he confirmed his agreement *in writing* by indicating his consent on the Notice of Rent Increase.

The Tenant further testified that he expressed his concerns to the Landlord at the time in text communication. Some of those texts were provided to me in evidence. While it is not surprising the Tenant was resistant to such a rent increase, the communication

indicates the parties negotiated the sum as they discussed the rent increase in relation to requested improvements to the rental unit. This culminated in the Tenant confirming his agreement by signing the Notice of Rent Increase.

Of particular note, the Tenant sent an email to the Landlord on October 27, 2020 wherein he described the agreement as a “good agreement” and a “compromise with the rental increase and list of repairs to be done.” For clarity I reproduce that portion as follows:



We have a good agreement, a compromise with the rental increase and the list of repairs to be done. It's been a lot this month, but the fixes are the still the same and are all getting dealt within the agreed timeframe. I know October has been busy. We are happy with our new fridge and the fence. And we are okay with the extended timeline because we agreed that those fixes could take up to next summer to complete.

Had the Tenant disagreed with the requested amount, he was at liberty to apply for dispute resolution for an order with respect to the amounts. On balance I find the Tenant did not apply for dispute resolution as the Tenant agreed to this sum.

The Tenant testified that the Landlord increased the rent again from \$5,200.00 to \$5,500.00 in September of 2021. The Notice of Rent Increase for that increase was not provided to me. The Tenant says he disputed this amount. The Landlord alleged the Tenant agreed. As this was during the rent freeze imposed by the Covid 19 Pandemic, the allowable rent increase was 0% such that the entire \$300.00 was over the allowable amount.

I find, pursuant to section 43(1)(c) that the Tenant agreed to the rent increase in October of 2020 from \$4,000.00 to \$5,200.00. This is clearly noted on the Notice of Rent Increase. While this is significantly over the allowable rent increase, I find the Tenant is “estopped” from disputing this amount, pursuant to the legal principle, *Estoppel by Convention*.

Guidance can be found in the Supreme Court of Canada decision, *Ryan v. Moore*, 2005 2 S.C.R. 53, where the court explained the issue of estoppel by convention as follows:

59 .... After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:



- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
- (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
- (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

Applying the foregoing, I find as follows:

- (1) The Tenant, having agreed to the rental increases and failing to dispute the requested amounts, created a mutual assumption upon which the Landlord relied.
- (2) The Landlord relied on this shared assumption, made improvements to the rental unit as requested by the Tenant.
- (3) It would be unjust and unfair to allow the Tenant to resile or depart from the common assumption that the October 2020 rent increase was mutually agreeable as the Landlord, having relied on the Tenant's agreement with the rent increase, performed upgrades to the rental unit.

While not determinative, I also note that in email communication between the parties a future rent increase was proposed by the Tenant before the tenancy began such that both parties agreed that as the Tenant's business became more profitable the Tenant would pay more rent.

While I have found the October 2020 rent increase was agreed to by the parties, I am unable to make the same finding with respect to the 2021 increase. The Tenant testified that this increase was from \$5,200.00 to \$5,500.00 in October of 2021; however, documentary evidence indicates the Tenants paid this sum in September of

2021. As this was earlier than 12 months from the previous increase, I find it is not permitted under the Act. Further, there was no indication the Landlord issued a Notice of Rent Increase on the appropriate form, nor any evidence this was agreed to by the Tenant. For these reasons I grant the Tenant's request for **\$300.00** for the September 2021 rent increase.

The Tenant also seeks monetary compensation for the cost of repairs to the rental unit. The Landlord did not dispute the fact these repairs were done or that the Tenant incurred the cost. The Landlord simply argued that the Tenant "jumped the gun" and performed the repairs without giving the Landlord an opportunity to perform them.

The evidence before me indicates that a tree fell on the back property in October of 2020. I accept the Tenant's testimony that he told the Landlord and the Landlord told him that as he had a chainsaw he could do it himself.

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides that the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

Tree removal is inherently dangerous and I find it unreasonable for the Landlord to expect the Tenants to take care of this work, even if they did have a chainsaw and the ability to do so. Professional tree fallers and arborists are trained to safely remove trees and are insured to do such work. It is not appropriate for the Landlord to expect the Tenants to put themselves at risk. I accept the Tenant's testimony that they were charged **\$500.00** to remove the tree and I find they should be reimbursed this sum from the Landlords. Accordingly, I award them the requested compensation.

In terms of the washer replacement the Tenant stated that he replaced the washing machine in January of 2021. He further testified that he tried to talk to the Landlord about other the washer as well as pest control at this time but that the communication had broken down at this point. He confirmed that they left the unit in the rental unit when they moved out as they didn't have anywhere to put it because their new place had a washing machine. The Tenant further stated that the Landlord did not offer to reimburse them even though they were aware it was replaced because the old one was disposed of at the Landlord's property.

While the maintenance of appliances is the responsibility of the Landlord, I find the Tenant could have retained the washing machine they purchased and sold it rather than

simply leaving it in the rental property. Further, there was no evidence before me that they asked the Landlord to replace the machine, or pay them for the one they purchased, rather they seemed to be relying on the Landlord *offering* to reimburse them. I find the Landlord was under no obligation to compensate the Tenant without evidence of clear communication about this appliance. I therefore dismiss this portion of the Tenant's claim.

Similarly, I dismiss the Tenants' request for compensation for the cost to repair the roof and soffit in January 2021. I accept the Tenants' testimony, and photos submitted in evidence, that a portion of the roof and soffit was taken out by the storm. I am also persuaded that the Landlord was aware of this damage at the time it occurred.

Section 33 of the Act sets out the steps required for a Tenant to be reimbursed for emergency repairs.

Again, while the Landlord may have been aware the power was out at the rental unit, and may have also been aware the roof and soffits were damaged, there was no evidence before me that the Tenants followed section 33 in terms of these emergency repairs. A tenant must give the landlord two opportunities to attend to the work; they can't simply commence work and expect reimbursement as the landlord is entitled to the opportunity to mitigate their losses by doing the work themselves, or hiring their preferred professionals. Further, there was no evidence the Tenant provided the Landlord with the receipts, nor any evidence they asked to be reimbursed for any expenses incurred to repair the damage. It is possible the Landlord assumed they simply reattached the original roofing material and soffits rather than purchasing new.

The Tenant testified that they did not give the Landlord the roof and soffit receipt as they were worried about "causing drama" and being evicted. While this may have been a concern it does not relieve the Tenants of the responsibility of communicating clearly with the Landlord as to any emergency repairs or maintenance required at the rental property, giving the Landlord a reasonable opportunity to address this work, providing receipts to the Landlord for any amounts spent, and clearly requesting reimbursement.

For these reasons I dismiss the Tenants' claim for compensation for the roof and soffit repair and any amounts incurred dealing with the power as a result of the tree falling on the house/power line in 2021.

The Tenant provided limited submissions regarding pest control. He stated that he tried to talk to the Landlord about pest control at the same time as he was discussing issues with the washing machine. The Tenant stated that communication had broken down at that time. In the email dated October 27, 2020 (where the Tenant confirms his agreement with the rent increase) the Tenant also wrote as follows:

If this is about the rats, we called because we know that this can turn into a major issue for the house, and we wanted to deal with it in a timely manner.

This email suggests to me that the Tenant hired a pest control company without giving the Landlord the opportunity to address this issue.

Again, a tenant cannot embark on repairs or maintenance without first obtaining the landlord's clear consent to such work. A tenant must communicate clearly with a landlord as to any repairs, (emergency or otherwise) or maintenance required at the rental property, give the landlord a reasonable opportunity to address this work and mitigate any costs, obtain the landlord's consent to performing any repairs or maintenance as the case may be, provide receipts to the landlord for any amounts spent, and clearly request reimbursement.

On balance, I am not persuaded the Tenant dealt with the pest issues in such a manner; as such, I dismiss the Tenant's request for related compensation.

### Conclusion

The Tenant's request for compensation for rent paid over the allowable amount is granted in part. The Tenant is entitled to the sum of **\$300.00** for the amounts paid for the September 2021 rent over and above the agreed upon \$5,200.00. The balance of the Tenant's claim in this respect is dismissed.

The Tenant's request for compensation for the cost of repairs and maintenance is granted in part. The Tenant is entitled to the sum of **\$500.00** for the cost of the tree removal in October of 2020. The balance of the Tenant's claim in this respect is dismissed.

Having been partially successful the Tenant is entitled to recover the filing fee of **\$100.00**.

The Tenant is entitled to the sum of **\$900.00**. In furtherance of this I grant the Tenant a Monetary Order in the amount of **\$900.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Dated: October 30, 2023

---

Residential Tenancy Branch