



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant: DRI, CNC, OLC, FFT  
Landlord: OPC, MNDL-S, FFL

### Introduction

This was a cross application hearing that dealt with two tenant applications and one landlord application. The tenant's first application made was pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;
- disputation of a rent increase, pursuant to section 43 of the *Act*;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant's second application was made pursuant to the *Act* for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- an Order of Possession for Cause, pursuant to sections 49 and 55;
- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Preliminary Issue- Service

Both parties agreed that they were each served with the others' application(s) for dispute resolution and evidence. I find that both parties were sufficiently served, for the purposes of this Act, in accordance with section 71 of the Act, with the above documents as receipt was confirmed by both parties. No issues with the timing of service were raised during the hearing.

### Preliminary Issues- Dismissal and Withdrawal

Both parties agreed that the tenant moved out of the rental property on October 1, 2023. I find that following claims are moot since this tenancy has ended and are therefore dismissed without leave to reapply:

- cancellation of the One Month Notices to End Tenancy, pursuant to section 47;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;
- the tenant's second application for authorization to recover the filing fee for this application from the landlord, pursuant to section 72;
- an Order of Possession for Cause, pursuant to sections 49 and 55.

The landlord withdrew the remainder of his application for dispute resolution because at the time this hearing, the total monetary damages are not yet known. The remainder of the landlord's application is therefore dismissed with leave to reapply, except for the landlord's claim for the return of the filing fee, which is dismissed without leave to reapply.

### Issues to be Decided

1. Did the landlord increase the rent above the amount permitted by law?
2. Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to the presented documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are

reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that they have signed two tenancy agreements pertaining to the subject rental property. Both parties agree that the first tenancy agreement entered into by the parties (the "First Tenancy Agreement") started on June 1, 2021 and that rent was \$1,250.00 per month, due on the first day of every month.

The tenant testified that through text messages and verbal communication, he gave the landlord notice that he was ending his tenancy as he planned to move in with his girlfriend. The tenant testified that he ended up breaking up with his girlfriend and had no-where else to go so he asked the landlord if he could stay. The tenant testified that the landlord agreed to enter into a new one-year fixed term tenancy agreement with him for rent of \$1,500.00. Both parties agree that the tenant signed a new one-year fixed term tenancy agreement with the landlord for the period of June 1, 2022 to May 31, 2023 with rent in the amount of \$1,500.00 (the "Second Tenancy Agreement"). The Second Tenancy Agreement was entered into evidence.

The tenant testified that the landlord was not permitted to raise the tenant by \$250.00 in the Second Tenancy Agreement and is seeking \$250.00 per month from the landlord from June 2022 to September 2023 for a total of \$4,000.00.

The landlord testified that the parties entered into the Second Tenancy Agreement after the tenant gave notice to end the First Tenancy Agreement and the newly negotiated amount for rent was not a rent increase under the Act. The landlord entered into evidence the following text message between the parties:

- February 28, 2022
  - Tenant: as much as I hate to do it because I love the place but I think I'm just going to vacate as of June 1.
  - Landlord: OK [tenant]. We will make plans for viewing starting mid-april. We will be sure to give you 24 hours notice prior to anyone showing up.
- April 6, 2022:
  - Landlord: OK. FYI if these guys are a go, they have said they would be willing to move in prior to June 1. Of course it's up to you, but if that makes things smoother or easier for you that might be able to happen.
  - Tenant: Ok I'll see where I'm at with packing
- April 12, 2022:

- Landlord: Hey [tenant], we have new tenant secured for June 1st or sooner( if that works for you). I will prorate any time left in May if you would like to move out before the first. Please make sure the place is cleaned well before hand off. Friendly reminder of item 11 on the lease addendum that states carpets are to be professionally cleaned before move out. Any questions, just let me know. Thank you.
- Tenant: Ok sounds good
- April 26, 2022:
  - Landlord: Ok [tenant], let's get a new lease agreement signed this week. As discussed, \$1500 per month plus half utilities for one year term, rolling over after that two-month to month....
  - Tenant: Yep sounds good

The landlord testified that the tenants he found for the subject rental property pulled out and so when the tenant asked to stay, he agreed on new terms. The Second Tenancy Agreement was signed by the tenant May 4, 2023. Numerous amicable text messages between the parties between February 28, 2022 and April 12, 2022 were entered into evidence regarding the landlord's access to the subject rental property for the purpose of showing it to prospective tenants

### Analysis

Based on the text messages entered into evidence and the testimonies of both parties, I find that on February 28, 2022 the tenant gave notice to end the tenancy effective June 1, 2022. Based on the text messages entered into evidence and the testimony of both parties, I find that the landlord acted on that notice to end tenancy and sought new tenants for the rental property. I find that due to a change in the tenant's circumstances, the tenant asked to stay at the subject rental property and the landlord agreed on new terms and thus the Second Tenancy Agreement was signed.

I find that after the tenant gave notice to end tenancy, the landlord was not obligated to re-instate the tenancy, with the same terms, when the tenant changed his mind about moving. I find that the landlord was entitled to rely on the notice to end tenancy provided by the tenant on February 28, 2022 and that the tenancy formed by the First Tenancy Agreement ended on June 1, 2022. The landlord and the tenant were free to enter into a new tenancy agreement with new terms, which they did by way of the Second

Tenancy Agreement. I find that the tenant freely entered into the Second Tenancy Agreement and freely agreed to its terms and is bound by them.

I find that the landlord did not illegally raise the rent contrary to section 42 and 43 of the Act as the tenant and the landlord elected to enter into a new tenancy agreement and freely agreed to the terms as stated in the Second Tenancy Agreement. As the parties entered into a new tenancy agreement, the rent increase rules found in section 42 and 43 of the Act do not apply. The tenant's claim for compensation for an illegal rent increase is dismissed without leave to reapply.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, in accordance with section 72 of the Act.

### Conclusion

The tenant's application to dispute a rent increase is dismissed without leave to reapply.

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: October 30, 2023

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Residential Tenancy Branch