



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## Dispute Codes:

O, CNC, MNDC, OLC, DRI

## Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession on the basis that the fixed term tenancy has ended.

The Tenant filed an Application for Dispute Resolution, in which the Tenant made application to set aside a Notice to End Tenancy for Cause; to dispute an additional rent increase; for a monetary Order in the amount of \$80.00; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*. There is no evidence that the Landlord served the Tenant with a Notice to End Tenancy for Cause, therefore there is no need to consider the Tenant's application to set aside a Notice to End Tenancy for Cause.

The hearing commenced on April 21, 2009. This hearing was adjourned once it was determined that evidence submitted to the Residential Tenancy Branch by the Landlord was not available to me. The hearing was reconvened on June 08, 2009.

Both parties were represented at both hearings. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

## Issue(s) to be Decided

The issue to be decided in relation to the Landlord's Application for Dispute Resolution, is whether the Landlord is entitled to an Order of Possession.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution, is whether there has been an illegal rent increase; whether there is a need for an Order requiring the Landlord to comply with the *Act*; and whether the Tenant is entitled to a monetary Order for \$80.00.

## Background and Evidence

The Landlord and the Tenant agree that the Tenant has lived in this rental unit since 2006. The parties agree that, since the beginning of the tenancy, they have entered into fixed term tenancy agreements that have been renewed upon their expiry date.

The Landlord submitted a written tenancy agreement that was signed by the Tenant on March 06, 2008. The tenancy agreement clearly stipulates that this is a one-year fixed term tenancy that ends on February 28, 2009. The tenancy agreement clearly stipulates that the Tenant must move out of the rental unit at the end of the fixed term tenancy “unless the landlord and the tenant agree in writing to enter into a new tenancy agreement”.

The rental agreement indicates that the Tenant agrees to pay \$450.00 per month in rent plus \$30.00 per month for natural gas, for a total monthly payment of \$480.00. The Landlord and the Tenant agree that under the terms of their previous tenancy agreement, the Tenant was only required to pay \$25.00 per month for natural gas.

The Tenant contends that the \$5.00 per month increase in the natural gas payment constitutes a rent increase and is, therefore, subject to the limitations established by sections 42 and 43 of the *Act*. She is seeking to dispute the additional \$5.00 payment for natural gas and is seeking compensation, at a rate of \$5.00 per month, for the additional gas payments she has made since the beginning of this fixed term tenancy.

The Tenant provided no evidence that establishes the Landlord has failed to comply with the *Act*.

The Landlord and the Tenant agree that the Landlord sent a letter to the Tenant, dated February 06, 2009, in which the Landlord reminded the Tenant that her fixed term tenancy ended on February 28, 2009; and in which the Landlord asked the Tenant to make arrangements to sign a new tenancy agreement and conduct a suite inspection prior to the end of the business day on February 27, 2009. The parties agree that they had several conversations regarding the Tenant’s belief that there had been an “illegal rent increase” after the Tenant received the letter dated February 06, 2009.

The Landlord and the Tenant agree that the Tenant did not agree to a suite inspection or make arrangements to sign a new tenancy agreement until after she received a letter from the Landlord, on February 27, 2009, in which the Landlord advised her that her fixed term tenancy ends on February 28, 2009 and that she was required to vacate the rental unit. On that date the Landlord also provided the Tenant with a cheque, in the

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amount of \$480.00, as reimbursement for the rent from March of 2009, that was scheduled to be automatically withdrawn from her bank account on March 01, 2009.

The Landlord and the Tenant agree that the Tenant then gave the Landlord a letter, dated February 27, 2009, in which she indicated her desire to enter into a new fixed term tenancy agreement. The parties agree that the Tenant returned the cheque that the Landlord had given to her earlier that day. The Agent for the Landlord stated that the Landlord elected not to enter into a new tenancy agreement with the Tenant, partly because of the delay in signing a new agreement and partly because there had been some difficulties with the tenancy.

The Landlord and the Tenant agree that the Tenant did not vacate the rental unit on February 28, 2009. The parties further agree that the Tenant has not yet vacated the rental unit.

At the hearing the Agent for the Landlord indicated that the Landlord would be willing to allow the Tenant to remain in the rental unit until July 31, 2009 if their application for an Order of Possession is successful, providing the Tenant made arrangements to pay her rent for July in cash, at which time they would provide her with a receipt indicating that the rent was being accepted for "use and occupancy only".

## Analysis

I find that the Landlord and the Tenant entered into a new tenancy agreement on March 06, 2008, after their previous fixed term tenancy expired. I find that when the Tenant signed the new tenancy agreement, she agreed to pay subsidized rent of \$450.00 per month and \$30.00 per month for natural gas for the period between March 1, 2008 and February 28, 2009.

Section 42 and 43 imposes restrictions on rent increases during a tenancy. It does not limit, in any way, the amount of rent that can be imposed at the beginning of a tenancy. As the parties entered into a new tenancy on March 06, 2008, they were not obligated to comply with section 42 and 43 of the Act. Specifically, I find that there was nothing prohibiting the Landlord from increasing the rent or the natural gas payment; there was no obligation for the Landlord to give notice of the increase; and there was no obligation for the Landlord to wait three months before imposing the increase. As the Tenant has not established that the Landlord imposed a rent increase, I hereby dismiss the Tenant's application to dispute an additional rent increase.

As the Tenant agreed to pay \$30.00 per month for natural gas when she signed this new tenancy agreement, I find that she is obligated to pay that amount. On this basis, I

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hereby dismiss her application for a monetary Order for the alleged overpayment of the monthly natural gas bill.

As the Tenant has failed to establish that the Landlord has not complied with the *Act*, I hereby dismiss the Tenant's application for an Order requiring the Landlord to comply with the *Act*.

Section 55(2)(c) stipulates that landlords may request an Order of Possession whenever they have a fixed term tenancy agreement that provides the tenant will vacate the rental unit at the end of the fixed term. I find that the Tenant entered into a fixed term tenancy agreement that required her to vacate the rental unit on February 28, 2009 unless the parties entered into a new tenancy agreement with the Landlord. I interpret the tenancy agreement to mean that either party can elect not to continue the tenancy, in which case the tenancy will end on February 28, 2009.

The evidence shows that the Landlord elected not to enter into a new tenancy agreement. Therefore, I find that the fixed term tenancy ended on February 28, 2009 and, under the terms of the tenancy agreement, the Tenant was required to vacate the rental unit on that date. On this basis, I find that the Landlord is entitled to an Order of Possession, pursuant to section 55(3) of the *Act*.

## Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on July 31, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

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: June 08, 2009.

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Dispute Resolution Officer