



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNDC, FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant made application for a monetary Order for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution from the Landlord.

Both parties were represented at the hearing. 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.

Neither party raised any preliminary issues regarding service of documents.

### Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for rent that was paid pursuant to an illegal rent increase and to recover the filing fee for this Application for Dispute Resolution from the Landlord, pursuant to sections 67, and 72(1) of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Agent for the Landlord and the Tenant agree that the Tenant lived in the rental unit prior to the current Landlord purchasing the property in July of 2007. The parties agree that the Tenant was paying \$505.00 when the Landlord purchased this property.

The Agent for the Landlord and the Tenant agree that the Landlord served the Tenant with a Notice of Rent Increase on, or about, July 23, 2007. The Notice declared that the Tenant's rent was to increase to \$650.00 from \$505.00, effective on November 01, 2007. This represents a 28.7% increase.

The Agent for the Landlord acknowledged that the Tenant did not agree to this increase in writing. He further acknowledged that the Landlord did not have the director's

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approval to increase the Tenant's rent by an amount that is greater than the amount calculated in accordance with the *Residential Tenancy Regulations* (Regulations).

The Agent for the Landlord and the Tenant agree that the Tenant paid the increased rent from November 01, 2007 until June 30, 2009. The Landlord contends that these payments should be construed as an agreement to pay the increased rent.

The Agent for the Landlord and the Tenant agree that the Landlord served the Tenant with a second Notice of Rent Increase on, or about, March 24, 2009. The Notice declared that the Tenant's rent was to increase to \$674.05 from \$650.00, effective on July 01, 2009. This represents a 3.7% increase.

The Agent for the Landlord and the Tenant agree that the Tenant paid \$674.05 in rent for July and August of 2009.

## Analysis

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount calculated in accordance with the *Regulations*. In 2007 the *Regulations* authorized landlords to increase the rent by four percent. As the 28.7% rent increase that was imposed by the Landlord in 2007 exceeds the amount that was authorized by the *Regulations*, I find that the rent increase is not compliant with section 43(1)(a) of the *Act*.

Section 43(1)(b) of the *Act* stipulates, in part, that a landlord may impose a rent increase only up to the amount ordered by the director. As there is no evidence that the rent increase that was imposed by the Landlord in 2007 was authorized by the director, I find that the rent increase is not compliant with section 43(1)(b) of the *Act*.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing. As there is no evidence that the rent increase that was imposed by the Landlord in 2007 was agreed to by the Tenant in writing, I find that the rent increase is not compliant with section 43(1)(c) of the *Act*. 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.

As the rent increase that was imposed by the Landlord in 2007 did not comply with the *Act*, I find that the Tenant's rent remained at \$505.00 and that she overpaid her rent by \$145.00 per month for the period between November 01, 2007 and June 30, 2009, which is twenty months. Section 43(5) of the *Act* stipulates that a tenant is entitled to recover a rent increase that is collected by a landlord if the increase does not comply

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with section 43 of the *Act*. In these circumstances, I find that the Tenant overpaid her rent by \$2,900.00 during this period, and I find that she is entitled to recover these overpayments.

As the Tenant's rent was not increased in compliance with the *Act* in 2007, I find that it remains at \$505.00 until it increased in accordance with the *Act*. As the rent remained at \$505.00, I find that the Landlord increased the Tenant's rent by approximately 33.47% when he increased the rent to \$674.05 on July 01, 2009. The allowable rent increase for 2009 is 3.7%. As the 33.47% rent increase that was imposed by the Landlord in 2009 exceeds the amount that was authorized by the *Regulations*, I find that the rent increase is not compliant with section 43(1)(a) of the *Act*.

As there is no evidence that the rent increase that was imposed by the Landlord in 2009 was authorized by the director, I find that the 2009 rent increase is not compliant with section 43(1)(b) of the *Act*. As there is no evidence that the rent increase that was imposed by the Landlord in 2009 was agreed to by the Tenant in writing, I find that the 2009 rent increase is not compliant with section 43(1)(c) of the *Act*. As previously stated, 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.

As the rent increase that was imposed by the Landlord in 2009 did not comply with the *Act*, I find that her rent remained at \$505.00 and that she overpaid her rent by \$169.05 for the month of July and \$169.05 for the month of August of 2009. In these circumstances, I find that the Tenant overpaid her rent for July and August by \$338.10, and I find that she is entitled to recover these overpayments, pursuant to section 43(5) of the *Act*.

I find that the Tenant's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

## Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$3,288.10, which is comprised of rent overpayments of \$3,238.10 and \$50.00 for the filing fee paid by the Tenant for this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for the amount of \$3,288.10. In the event that the Landlord does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.



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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: August 17, 2009.

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Dispute Resolution Officer