



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MT, CNR, DRI

### Introduction

This matter dealt with an application by the Tenant for more time to cancel a Notice to End Tenancy and to cancel a Notice to End Tenancy for Unpaid Rent. The Tenant also applied to dispute a rent increase. The Tenant/Applicant did not attend the hearing and as a result, the hearing proceeded in his absence.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Is there a valid rent increase?

### Background and Evidence

This tenancy started on October 1, 2003. Under the Parties' tenancy agreement, rent was \$700.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Landlord said that he had a verbal agreement with the Tenant that the rent would be increased to \$850.00 per month effective October 1, 2008.

Both Parties provided evidence which shows that the Tenant paid \$700.00 per month until October 1, 2008 when he started paying \$850.00 per month. However, at some point the Tenant took the position that the rent increase was not valid and sought to deduct overpayments from his rent. The Tenant did not pay rent for June or July, 2009 and paid \$600.00 for August, 2009. The Tenant provided written submissions in which he argued that despite these deductions, the Landlord still owed him overpayments of \$1,100.00.

The Landlord claimed that as of August 8, 2009, the Tenant had arrears of \$300.00. Consequently, on August 8, 2009, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail. According to the Canada Post online tracking system, the Tenant received the Notice on August 12, 2009. The Landlord said that the Tenant has not paid the rent arrears to date.

## Analysis

Pursuant to s. 90 of the Act, the Tenant was deemed to receive the Landlord's 10 Day Notice 5 days after it was posted or on August 13, 2009. Consequently, the Tenant had until August 18, 2009 to file an application to dispute the Notice. As the Tenant filed his application on August 13, 2009, I find that he applied within the time limits under the Act and does not require an order extending the time.

Sections 42 and 43 of the Act say that a Landlord may not impose a rent increase on a Tenant that is more than the amount permitted under the Regulations to the Act unless he has the Tenant's written agreement or the director's approval. I find that the Landlord did not have the Tenant's written agreement or the director's approval for the \$150.00 per month rent increase that went into effect on October 1, 2008 and accordingly I find that it is not enforceable.

Section 43(5) of the Act says that if a Landlord collects rent that does not comply with the Act, the Tenant may deduct the increase from rent or otherwise recover it. I find that the Tenant overpaid \$150.00 for 8 months for an overpayment of \$1,200.00. I further find that the Tenant was entitled to deduct that amount from his rent payment(s) for June and part of July, 2009.

I note, however, in the Tenant's written submissions that he made a mathematical error in his calculations. In particular, the Tenant claimed that as of September 1, 2009, he had paid \$50,100.00 for 70 months of rent. The Tenant also claimed that over the same period he was only required to pay \$49,000.00 with rent at \$700.00 per month. However, the actual number of months should have been 72 which at \$700.00 per month totals \$50,400.00. Consequently, I find that the Tenant has underpaid by \$300.00 as alleged on the 10 Day Notice to End Tenancy. I also find that the Tenant has not paid the rent arrears of \$300.00.

The Landlord admitted that although the tenancy agreement stated that rent was due on the 1<sup>st</sup> of each month, he agreed that the Tenant could pay it at the end of the month which coincided with his pension payments. Even if I accept that this term of the tenancy agreement was changed by the practice of the Parties, I still find that the Tenant did not pay the rent arrears at the end of August 2009 or at all.

As a result of the foregoing, I find that there are no grounds for setting aside the 10 Day Notice dated August 8, 2008 and the Tenant's application is dismissed. The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.



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## Conclusion

The Tenant's application to dispute a rent increase is allowed. The Tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated August 8, 2009 is dismissed. An Order of Possession to take effect 48 hours after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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 01, 2009.

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Dispute Resolution Officer