



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPR, MNR

### Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Dispute Resolution Officer at the Direct Request Proceeding had insufficient evidence to determine the monthly rent that is currently payable for this rental unit.

The reconvened hearing was held to address the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent. At the hearing the Landlord withdrew his application for an Order of Possession as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent, pursuant to section 67 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2005, at which time the Tenant agreed to pay monthly rent of \$1,500.00 on April 01, 2008.

The Landlord and the Tenant agree that on December 29, 2007 the Landlord provided the Tenant with a Notice of Rent Increase that declared the Tenant's rent would increase from \$1,500.00 to \$1,600.00 on April 01, 2008. The Landlord stated that the Tenant verbally agreed to this rent increase. The Tenant stated that she did verbally agree to the rent increase because she was not aware that the increase did not comply with the *Act*.

The Landlord and the Tenant agree that the Tenant has paid monthly rent of \$1,600.00 since April 01, 2008, with the exception of September of 2010 and August of 2010. The parties agree that no rent was paid for August or September of 2010.

The Landlord contends that the Tenant owes \$3,200.00 in unpaid rent from September and August of 2010. The Tenant contends that she owes \$3,200.00 in rent from September and August of 2010, less the \$100.00 monthly overpayments she has paid as a result of the rent increase that was paid since April 01, 2008, less the security deposit she paid in relation to this tenancy.

### Analysis

The undisputed evidence is that the Landlord and the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,500.00 on the first day of each month; that the Landlord provided the Tenant with written notice that the rent would increase from \$1,500.00 to \$1,600.00 on April 01, 2008; that the Tenant has paid monthly rent of \$1,600.00 between April 01, 2008 and July 01, 2010, which is a period of 28 months; that the tenancy ended on September 29, 2010; and that the Tenant paid no rent for August and September of 2010.

Section 43(1)(a) of the *Act* stipulates, in part, that a landlord may impose a rent increase once per year in an amount that does not exceed the amount that is calculated in accordance with the regulations. Section 22(2) of the *Residential Tenancy Regulation* stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate which, for 2008 was 3.7%. As the rent increase that was imposed by the Landlord on April 01, 2008 was 6.6%, which is greater than the amount that is calculated in accordance with the regulations, I find that the Landlord did not have authority to increase the rent to \$1,600.00 on April 01, 2008 pursuant to section 43(1)(a).

Section 43(1)(b) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the *Act*. As I have no evidence that the Landlord made an application under section 43(3) of the *Act*, I find that the Landlord did not have authority to increase the rent to increase the rent on April 01, 2008 pursuant to section 43(1)(b).

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As I have no evidence that the Tenant agreed to the proposed rent increase, in writing, I find that the Landlord did not have authority to increase the rent the rent on April 01, 2008 pursuant to section 43(1)(c). The *Act* does not permit the Landlord to increase rent in the strength of a verbal agreement.

On this basis, I find that the rent increase of \$100.00 that the Landlord imposed on April 01, 2008 was not valid as it did not comply with the legislation. I therefore find that the

rent for this rental unit should have remained at \$1,500.00 until it was increased in accordance with the legislation.

Section 43(5) of the *Act* stipulates that if a landlord collects a rent increase that does not comply with legislation the tenant may deduct the increase from rent or otherwise recover the increase. In these circumstances, the Landlord collected a \$100.00 rent increase that did not comply with legislation for a period of 28 months, which is \$2,800.00. I therefore find, pursuant to section 43(5) of the *Act*, that the Tenant has the right to deduct \$2,800.00 from rent owed to the Landlord.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$3,000.00, which is comprised of \$1,500 in rent that was due on August 01, 2010 and \$1,500 in rent that was due on September 01, 2010. I find that this rent must be reduced by the \$2,800.00 rent overpayment that was made by the Tenant between April 01, 2008 and July 01, 2010.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$200.00. In the event that the Tenant 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.

The Landlord and the Tenant were given the opportunity to reach a settlement in regards to the security deposit that was paid at the beginning of this tenancy, however the Tenant did not wish to settle that matter at this hearing. No decision was made in relation to the security deposit at this hearing, as the Landlord did not make an application to retain the security deposit and it is not, therefore, a matter that can be determined at this hearing.

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 19, 2010.

---

Dispute Resolution Officer