



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      DRI, MNDC, & FF

### Introduction

This hearing dealt with the tenant's claim seeking a monetary claim related to rent paid based on a rent increase which was not implemented in accordance with the *Act*. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issue(s) to be Decided

Did the landlord comply with the *Act* in raising the rent?

### Background and Evidence

The parties entered in a tenancy agreement in August or September 2002 when the tenant moved to the rental unit to live and work. All agreements between the landlord and the tenant were verbal. There is no dispute that the tenant paid a monthly rent of \$500.00 until January 2008.

The tenant stated that the landlord increased the rent effective February 1, 2008 to \$600.00 a month and again on February 1, 2009 the tenant's rent was increased to \$700.00.

Effective February 2010 the landlord wished to increase the tenant's rent to \$750.00 a month. This time the tenant did not agree, and informed the landlord of their obligation to comply with sections 40, 42, and 43 of the *Residential Tenancy Act* (Act); but the tenant submitted that he did end up paying \$725.00 a month to the end of the tenancy by deducting the \$25.00 from hours billed to the landlord.

The tenant seeks the following monetary claim due to paying rent increases which were not in accordance with the *Act*:

February 1, 2008 to January 31, 2009 – allowable rent increase was \$18.50 and tenant paid an additional \$100.00 for a monthly difference of \$81.50 X 12 =	\$978.00
February 1, 2010 to August 2010 – tenant alleges that the rent was increased an additional \$25.00 which was paid to the landlord through the employment contract. The tenant submits an additional five months of rent increase of \$80.81 + 81.50 + \$7.80 X 6 =	\$1,020.60
Recovery of filing fee paid for this application	\$50.00
<b>Total</b>	<b>\$3,996.32</b>

The landlord submits that the agreement was that the tenant was working as a caretaker in exchange for a reduced or subsidized rent. There was nothing documented in writing respecting what the tenant's hourly wage was, what the tenant's monthly rent was or what number of hours the tenant was expected to work or how many hours of the tenant's work went towards his monthly rent.

The landlord submitted that in 2007 it was perceived that the tenant was not completing the work required to subsidize his rent and discussions occurred to increase the rent. The landlord stated that both the landlord and the tenant had a historical relationship of making verbal agreements and the tenant agreed to all the rent increases. The landlord submitted that there has subsequently been deterioration in their personal relationship and now the tenant is relying on the *Act* to get back rent he had agreed to pay.

### Analysis

The Act applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas.

A tenancy agreement is defined in the *Act* as follows:

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

Section 5 of the *Act* states that the obligations and rights under the legislation cannot be avoided or waived by contract and section 14 of the *Act* provides that all tenancy agreements have standard terms as provided for in the Regulations whether or not the agreement is in writing.

However, I recognize that historically both the landlord and the tenant conducted themselves outside of the *Act* through mutual verbal agreements which were satisfactory to each party.

I accept that the landlord and the tenant entered into a verbal tenancy agreement for this rental unit effective August 1, 2002. I accept that the agreement was that the tenant would pay the monthly rent of \$500.00.

I do not accept the landlord's submission that the tenant's rent was subsidized or modified based on the tenant's employment with the landlord. There was insufficient evidence of written or verbal agreements defining the terms of the tenancy agreement and the contract for employment services. I find that the two are separate and the parties dispute about aspects of the employment contract are not within the jurisdiction of the *Act*. By their actions, I find that the landlord and the tenant implicitly accepted that the monthly rent was \$500.00 per month.

I accept that the landlord and the tenant verbally agreed to the rent increases; however, that verbal agreement is not sufficient to meet the requirements of sections 42 and 43 of the *Act*. Sections 42 and 43 allow a landlord to increase the rent beyond the prescribed amount if:

- The tenant agrees in writing;
- The landlord puts the agreed rent increase into the proper form; and
- The landlord provides the tenant with the required three months notice for the increase to take effect.

I find that these requirements were not met and therefore the tenant is entitled to recover the overpayment made in the monthly rent.

Finally, I do not accept the tenant's argument that he paid a rent increase of \$25.00 per month for the months of February 2010 to August 2010 and find that the tenant only continued to pay the raised rent of \$700.00 per month. I reject this portion of the tenant's claim as it is associated with the contract for services and was issued outside of the jurisdiction of the *Act*.

Therefore, I find that the tenant is entitled to a monetary Order in the amount of **\$3,949.58** including the recovery of the \$50.00 filing fee paid for this application.

Conclusion

I have granted the tenant's application and find that the tenant is entitled to a monetary Order in the amount of **\$3,949.58** to recover money paid for rent increases which did not comply with the *Act*.

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: February 17, 2011.

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Residential Tenancy Branch