



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      DRI, CNL, MNDC

### Introduction

This hearing was scheduled to hear the tenant's request to dispute an additional rent increase and compensation for overpayment of rent. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

In making the application, the tenant also indicated that he wished to dispute a Notice to End Tenancy for Landlord's Use; however, the Notice to End Tenancy was heard pursuant to a hearing scheduled under file no. ##### and this decision pertains to the matter of the rent increase only.

### Issue(s) to be Decided

Has the tenant established that he has paid rent increases that do not comply with the requirements of the Act?

### Background and Evidence

The tenancy commenced May 1, 2008 and the tenant was required to pay rent of \$1,050.00 on the 1<sup>st</sup> day of every month. Starting February 1, 2010 the landlord increased the rent to \$1,150.00. The landlord also issued a Notice of Rent Increase indicating the rent would increase to \$1,250.00 effective March 1, 2011.

The tenant has submitted that the landlord has imposed two wrongful rent increases upon him and is seeking to be reimbursed the rent increases he has paid. The tenant learned that the most recent rent increase violates the Act and provided the landlord with rent cheques to pay the landlord a lesser amount of \$1,176.45 for the months of March, April, May and June 2011. The rent cheque for March 2011 was calculated as \$1,176.45 less the amounts awarded to the tenant under the previous dispute resolution proceeding. The landlord has returned the cheques for May and June to the tenant.

The landlord acknowledged that the tenant's written consent was not obtained before increasing the rent to \$1,150.00. The landlord submitted that the rental unit was advertised for \$1,150.00 per month in 2008. In negotiating the terms of tenancy the tenant and the landlord's agent verbally agreed that the tenant would pay a reduced rent of \$1,050.00 for the first year and then the landlord could increase the rent to the advertised rent of \$1,150.00 after the first year. The tenant denied making such an agreement with the landlord's agent and submitted that if there was such an agreement it would have been reflected in the written tenancy agreement.

With respect to the more recent Notice of Rent Increase, the landlord stated that he withdrew the Notice of Rent Increase upon learning the amount of the rent increase is greater than that permitted by the regulations. The tenant paid and the landlord has accepted a rent increase for the permissible amount of \$26.45 per month for March and April 2011.

Provided as evidence for this proceeding was a copy of the tenancy agreement, the Notice of Rent Increase with the stated effective date of March 1, 2011, and copies of various cheques provided to the landlord by the tenant in 2010 and 2011.

### Analysis

A tenancy agreement establishes the amount of rent payable by a tenant. Section 42 of the Act provides for the timing and notice requirements for rent increases and section 43 provides for the amount a landlord may increase the rent payable by the tenant. Section 43(5) provides that if a landlord collects a rent increase that does not comply with the Act, the tenant may recover the amount of the increase from the landlord.

Pursuant to section 43(1), unless the landlord has the tenant's written consent or the authorization of the director, the amount the landlord may increase the rent is limited to the percentage stipulated by Residential Tenancy Regulation 22. For rent increases effective in 2010 the regulation limited a rent increase to 3.2%.

The rent increase of \$100.00 paid by the tenant starting February 2010 exceeds the regulated limit of 3.2% and I do not have evidence that the tenant agreed to increase the rent to \$1,150.00 in writing. Therefore, the monthly rent increase of \$100.00 paid by the tenant for February 2010 through February 2011 is recoverable from the landlord.

With respect to the second Notice of Rent Increase, the amount of the rent increase stated on the Notice exceeds the regulated limit of 2.3% for 2011 and the tenant did not authorize this rent increase in writing. Accordingly, the second Notice is invalid and

unenforceable. The tenant has not received a Notice of Rent Increase setting the rent at \$1,176.45. Nor does the Act provide that an incorrect amount on a Notice of Rent Increase changes to comply with the Act. Therefore, I do not find the tenant was obligated to pay the rent increases paid in March 1, 2011 and April 2011.

In light of the above findings, the rent payable by the tenant is set at \$1,050.00 until such time the rent is increased in a manner that complies with the requirements of the Act. As information for the parties, a landlord may seek the director's authorization for an additional rent increase by making the appropriate application.

In light of the above findings, the tenant is entitled to recover the sum of all of the rent increases paid since February 1, 2010 and I award the filing fee to the tenant. I provide the tenant with a Monetary Order calculated as follows:

\$100.00/mo overpayment for months Feb 2010 – Feb 2011	\$ 1,100.00
\$176.45 overpayment for months March and April 2011	352.90
Filing fee	<u>50.00</u>
Monetary Order for tenant	\$ 1,502.90

The tenant is authorized to deduct the above total award from rent otherwise payable to the landlord. In the event the tenancy ends before the award may be recovered, the tenant may enforce the unrecovered balance by serving the Monetary Order upon the landlord and enforcing in Provincial Court (Small Claims) if necessary.

### Conclusion

The tenant was successful in this application and has been authorized to deduct \$1,502.90 from future rent payable to the landlord or enforce any unrecovered balance by way of the Monetary Order provided to the tenant with this decision. The monthly rent payable by the tenant remains at \$1,050.00 until such time the rent is increased in a manner that complies 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: April 20, 2011.

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Residential Tenancy Branch