



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, DR, CNR, FF

### Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord. The tenant seeks:

1. To dispute an additional rent increase;
2. To cancel a Notice to End Tenancy given for unpaid rent;
3. A monetary order for money owed or for compensation for damage or loss; and
4. Recovery of the filing fee paid for this application.

The landlord seeks:

1. An Order of Possession;
2. A monetary Order for unpaid rent; and
3. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter.

### Issue(s) to be Decided

Is either party entitled to the Orders sought?

### Background and Evidence

This tenancy began in December 2009, rent was fixed at \$850.00 per month and the tenant paid a security deposit of \$425.00. The tenant says that in March 2011 the landlord gave her a letter telling her that her rent was being increased by \$100.00 to \$950.00 per month. The tenant says she was not aware of her rights under the *Residential Tenancy Act* and she simply paid the extra \$100.00 for the months of March, April and May. The tenant says she gave her notice on May 28, 2011 advising the landlord that she was vacating the rental unit. The tenant says she did move out on June 10, 2011 and she did not pay June's rent. The tenant says she is seeking the

return of the rental over payment and recovery of her filing fee. In her application the tenant is seeking \$975.00 but did not state how she arrived at this figure.

With respect to the rent increase the landlord says the rent was increased by mutual agreement. The landlord says that mutual agreement arose when he handed the tenant a letter telling her the rent would increase by \$100.00 and the tenant accepted the increase by paying the increase. The landlord says the tenant has now vacated the rental unit so he no longer requires an Order of Possession however he does seek a monetary order for June's rent which was not paid.

### Analysis

With respect to the tenant's claim to recover an additional rent increase, I find that the evidence shows that the tenant's rent was increased from \$850.00 to \$950.00 which increase contradicts the allowable amounts as set out in the Act. While the landlord says the tenant agreed to the increase by paying it, I find that acquiescing to a landlord's demand does not constitute an agreement. In order to find that there had been a mutual agreement such an agreement, in writing and signed by both parties, would have to be provided in evidence. No such agreement was provided and I therefore find that the increase was contrary to the Act and it should be refunded to the tenant. The tenant paid the increase for the months of March, April and May each in the sum of \$100.00 for a total of \$300.00.

With respect to the landlord's claim for June rent the evidence is clear that the tenant did not pay June rent. Having given her notice on May 28, 2011 the tenant is therefore responsible for paying June's rent and I will make an award in favour of the landlord in the sum of \$850.00 representing June's rent. As I have made an award in favour of the tenant her award shall be deducted from the landlord's award. As the landlord holds a security deposit of \$425.00 I will allow him to retain that sum in partial satisfaction of the monetary award I have made for June's rent. The calculation of the award is as follows:

Rental arrears award in favour of landlord	\$850.00
Less award in favour of tenant for rent overpayment	-300.00
Less Security Deposit that the landlord may retain	-425.00
<b>Balance remaining to be paid by the tenant to the landlord</b>	<b>\$125.00</b>

As both parties have been successful in their claims I decline to award recovery of the filing fee to either party.

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial 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*.

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