



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, OPB, MNR, CNR DRI, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent and Breach of a material term of the tenancy a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant has applied to dispute a Notice ending tenancy issued for unpaid rent and to dispute an additional rent increase.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

Only landlord, A.W. was affirmed, as he provided all testimony on behalf of the landlord.

The landlord did not supply any evidence; neither party provided a copy of any Notice issued ending the tenancy.

The landlord has applied requesting compensation for damage and loss; as fees.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent and/or breach of a material term of the tenancy?

Is the landlord entitled to a monetary Order for fees owed?

Has the landlord issued an illegal rent increase?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The parties agreed that the tenancy commenced July 1, 2010. The tenant confirmed that in March, 2011, he signed a Notice of Rent Increase, acknowledging an increase in his rent by \$10.00 to \$1,260.00 effective July 1, 2011.

The landlord stated that the tenant has paid rent owed within 5 days of issuing a Notice ending tenancy for unpaid rent and that rent is paid in full, to date.

The landlord is claiming a \$25.00 late fee and a \$25.00 NSF fee for payment made in August, 2011. Clause 10 of the tenancy agreement was read, which included these fees; the clause was initialled by the tenant.

The tenant testified that an agent of the landlord had told him he would not have to pay the \$10.00 rent increase; as the tenant had indicated he would move out rather than pay more rent. The tenant confirmed he did not receive confirmation of this agreement in writing. The employee who had given the tenant this permission was not present at this hearing.

The tenant stated that in late July he noticed his automatic rent payment for July 1, 2011 had included the extra \$10.00. The tenant then stopped his automatic payment for August, without ensuring that payment, due on the first day of each month, would be made on August 1, 2011. The tenant did give the landlord payment on August 3, 2011 and it was processed the next day.

### Analysis

In the absence of any copies of a Notice ending tenancy for cause, I find that the landlord's application requesting an Order of possession is dismissed.

The landlord confirmed that the tenant paid rent owed, in full, within 5 days of having issued a Notice ending tenancy for unpaid rent.

I find that, to date, there are no Notices ending tenancy in force or effect and that this tenancy shall continue until it is ended as provided by the Act.

In the absence of any evidence that the Notice of Rent Increase was altered, in writing, by the landlord, I find that I must rely upon the written Notice which the tenant confirmed he signed in March, 2011, increasing his rent to \$1,260.00 effective August 1, 2011, as rent owed. The landlord has not issued an illegal rent increase.

I find that the landlord is entitled to a late fee and NSF fee in the sum of \$50.00 as the tenant did not pay August, 2011, rent on the first day of the month and placed a stop on the payment that was to be processed.

As the tenant's application has some merit, as does the landlord's, I decline filing fee costs to either.

The amount owed to the landlord is not unpaid rent, but fees.

### Conclusion

Any Notice ending tenancy issued, to this date, is of no force or effect. The tenancy shall continue until it is ended as provided by the Act.

I find that the landlord has established a monetary claim, in the amount of \$50.00, which is comprised of August, 2011, late and NSF fees.

Based on these determinations I grant the landlord a monetary Order in the sum of \$50.00. 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.

Rent is \$1,260.00 per month, due on the first day of each month.

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: September 13, 2011.

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Residential Tenancy Branch