



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened 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, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the 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. Neither party submitted evidence.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 1988 and that the rent is due by the first day of each month.

The Landlord and the Tenant agree that the rent was \$850.00 approximately four years ago; that approximately four years ago the Landlord's husband verbally informed the Tenant that rent was increasing to \$1,100.00; that the rent increase was not agreed to in writing and the Landlord did not provide the Tenant with written notice of the increase; and that on July 01, 2012 the rent was reduced to \$1,000.00.

The Tenant stated that a security deposit of \$350.00 was paid on August 01, 1988. The Landlord does not know how much of a security deposit was paid nor does she know when it was paid.

The Landlord and the Tenant agree that the Tenant was personally served with a Ten Day Notice to End Tenancy on August 23, 2012, which declared that the Tenant must vacate the rental unit by September 02, 2012. The parties agree that the Tenant did vacate the rental unit on September 02, 2012.

The Agent for the Landlord stated that the Tenant currently owes rent of \$20,100.00. Neither the Landlord nor the Agent for the Landlord could explain how this debt has accrued. The Landlord stated that she does have records of payments but she did not have them with her and she did not submit them in evidence. The female Tenant agreed that rent is owed but she has no idea how much is owed.

The Landlord stated that she does have records from 2012, which indicate that the only rent the Tenant paid for this year was \$800.00 in January and \$1,000.00 in April. The female Tenant stated that she does not know how much rent she paid in 2012 but she does not dispute the testimony provided by the Landlord regarding the payments in 2012.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the parties entered into a tenancy agreement for which the Tenant was paying \$850.00 per month until approximately four years ago.

On the basis of the undisputed evidence presented at the hearing, I find that the rent was increased to \$1,100.00 approximately four years ago; that the Tenant did not agree to the increase in writing; and that the Landlord did not provide the Tenant with written notice of the increase.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to 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. As the rent increase that was imposed by the Landlord approximately four years ago was an increase of over 29%, which is far 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 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 has made an application under section 43(3) of the *Act*, I cannot conclude that the Landlord had the authority to increase the rent 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 rent increase, in writing, I find that the Landlord did not have authority to increase the rent pursuant to section 43(1)(c).

I therefore find that the rent for this rental unit remained at \$850.00. I find that the Tenant was therefore obligated to pay rent of \$7,650.00 for the period between January 01, 2012 and September 30, 2012, the last payment of which was due on September 01, 2012. On the basis of the testimony of the Landlord, who testified with the aid of financial records, and in the absence of evidence to the contrary, I find that the Tenant has only paid \$1,800.00 in rent in 2012. I therefore find that the Tenant still owes \$5,850.00 in rent for 2012.

I find that the Landlord has submitted insufficient evidence to establish how much rent is outstanding for any period prior to 2012. In reaching this conclusion I was influenced by the following factors:

- The Landlord did not have financial records available to her at the time of the hearing and she was unable to state what payments had been made prior to 2012
- The Landlord's claim is based on monthly rent of \$1,100.00 for 2009, 2010, and 2011, which would be total rent of \$39,600.00
- The actually rent for these three years, based on my finding that rent is only \$850.00, was only \$30,600
- Given that the Landlord has miscalculated the total rent owing and is unable to provide proof of payments, I cannot determine, with any accuracy the amount of rent currently outstanding
- Given that the Landlord and the Agent for the Landlord were not able to provide accurate details regarding the dates of payments; the date the rent was increased to \$1,100.00; the amount of the security deposit paid; and the date the security deposit was paid, I question the veracity of the testimony that \$20,100.00 in rent is due. While I do not question the integrity of the Landlord or the Agent for the Landlord, I am simply not satisfied that their calculations are accurate.

For all of the aforementioned reasons, I dismiss the Landlord's claim for compensation for any period prior to 2012.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$5,950.00, which is comprised of \$5,850.00 in unpaid rent from 2012 and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$350.00 plus interest of \$239.52, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$5,360.48. 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.

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 02, 2012.

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Residential Tenancy Branch