



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MT CNR DRI MNDC

### **Introduction**

This conference call hearing was convened in response to the tenant's application to cancel the landlord's Notice to End for unpaid rent, dispute an additional rent increase and a monetary order for overpayment of rent. The tenant applied for more time to dispute the notice to end, which was not necessary as the tenant filed within the prescribed time to do so. The hearing proceeded on the merits of the balance of the application.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the claim and to make relevant prior submission to the hearing and participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord acknowledged receiving all of the evidence of the tenant comprised of the notice to end and the landlord's attachment, page 2 of a notice of rent increase and the tenant's calculation for their monetary claim. The landlord did not submit document evidence.

### *Preliminary matters*

The tenant stated they are vacating. The parties confirmed the tenancy is coming to an end November 30, 2016. Both parties agreed to the landlord receiving an Order of Possession effective November 30, 2016, and I will so Order.

### **Issue(s) to be Decided**

Did the landlord issue a valid Notice of Rent increase?  
Is the tenant entitled to the monetary amount claimed?

### **Background and Evidence**

The undisputed relevant evidence of the parties is as follows. There is no written tenancy agreement. The tenancy started in 2008. The landlord took ownership of the residential property in 2011.

The disputed relevant evidence is as follows. The tenant testified they were paying rent of \$550.00 each month from the outset of their occupancy in 2008, and in 2014 the landlord gave them a Notice of Rent Increase form dated May 01, 2014 stating their new rent would be \$750.00 effective May 01, 2014. The tenant testified that lacking other information they accepted the new rent as the ongoing rent and satisfied it going forward. The landlord testified that the rent was always \$750.00 and they have never given the tenant a Notice of Rent increase form associated with their tenancy.

The tenant provided into evidence the top portion of the second page of a Notice of Rent Increase form, sections C. and D. The bottom half of the form is blank. The tenant testified they were only given the page of the form as submitted. The hearing confirmed that both sections presented were populated indicating C. the payable rent as of May 01, 2014 was to be \$750.00 from the stated current rent of \$550.00, and D. the first and last names of the landlord were printed and the landlord's signature line was signed and dated 5/1/14. The tenant testified they received the one page document and the landlord began collecting the rent in the amount of \$750.00 per month.

The landlord testified that section D. of the document contained their printed name in what appeared to be their hand writing, and the signature appeared as their own as well. Regardless, the landlord testified they did not recall giving the tenant the form or giving such a form with the same particulars to one of their other tenancies. The landlord argued the document was missing the first page identifying the parties and particulars of the tenancy in dispute therefore it could not be proven the form related to the tenancy in dispute. In associated testimony regarding the submitted document the landlord stated that rent of \$750.00 was reasonable for the one bedroom basement unit; and in addition the tenant has been subletting the unit. The landlord questioned if the tenant was declaring rent income to the CRA. The landlord repeated they are not fully aware of what is occurring within the suite; and, that they do not know what else would be revealed by the missing portion to the tenant's document evidence. The tenant responded that the form submitted was all that was given to them and

has remained in their possession. The tenant testified they eventually came to know they had been paying an illegal rent increase upon receiving the landlord's recent Notice to End for unpaid rent.

The tenant claims they paid an extra \$200.00 per month for 2014 in the sum of \$1400.00. They claim paying an extra \$200.00 per month for 2015 in the sum of \$2400.00 and an extra \$200.00 for the months in 2016, in whole or in part, for which they satisfied the rent in the amount of \$750.00.

The landlord gave the tenant a ledger accompanying the Notice to End for unpaid rent stating the tenant *owed* \$1060.00 as follows,

\$60.00 for January 2016 rent (of rent purported in the amount of \$750.00), and  
\$200.00 for each of February, June, July, August and September 2016 (of rent in the amount of \$750.00).

It is noted that in effect the landlord's ledger states the tenant satisfied rent in the amount of \$750.00 per month, in whole or in part, for the months of January, March, April and May 2016.

### **Analysis**

On preponderance of the evidence and on the balance of probabilities I find as follows.

Section 43(1) of the Act states in part that; a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, or agreed to by the tenant in writing pursuant to 43(1)(c). Section 43(5) of the Act states that If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. The tenant claims the landlord's rent increase demand did not correspond to the approved allowable rent increase however in the absence of additional knowledge paid it. The landlord claims they did not give the tenant a rent increase notification nor did they collect an additional \$200.00 illegal rent increase each month as claimed by the tenant.

I find the evidence in this matter cannot be more contrasting. Based on the testimony of both parties I find the tenant's testimony was matter of fact and unembellished, forthright and direct. Conversely, I find the landlord's testimony was indirect and argumentative. The landlord argued

how the tenant's evidence was unreliable for its missing parts, rather than stating what they were implying: that the tenant's evidence had to be fraudulent given they did not at all provide the tenant with a rent increase document. I found the landlord's testimony focused on vilifying the tenant and justifying the rent in the disputed amount of \$750.00 as being reasonable. In addition, I find that the landlord's verification of their printed name and signature on the tenant's document weighs on the side that it is likely theirs. The evidence does not answer how the tenant came to possess the landlord's name and signature on the second page of a Notice of Rent Increase form if the landlord did not provide it to the tenant. I find the landlord's testimony as a whole does not make sense. I therefore prefer the evidence of the tenant over that of the landlords' where there is a conflict.

As a result, on a balance of probabilities I accept and find the tenant was given a partial Notice of Rent Increase form which successfully operated to allow the landlord to collect an extra \$200.00 per month in rent beginning May 01, 2014. Effectively, I find the tenant paid monthly rent increases of \$200.00 in addition to their rent which were unsupported by a valid Notice of Rent Increase document in the approved form in accordance with the Regulations. I find the tenant overpaid \$1400.00 as unauthorized rent during 2014, and \$2400.00 in 2015. I also find the tenant overpaid \$140.00 in January 2016 and \$200.00 each month for March, April and May 2016 for the sum of \$740.00 as unauthorized rent during 2016. I find the tenant is entitled to recover overpayments of rent as follows,

Overpayment of rent for 2014	\$1400.00
Overpayment of rent for 2015	\$2400.00
Overpayment of rent for January 2016	\$140.00
Overpayment of rent for March 2016	\$200.00
Overpayment of rent for April 2016	\$200.00
Overpayment of rent for May 2016	\$200.00
Total Monetary Award to tenant	<b>\$4540.00</b>

**I grant the tenant an Order** under Section 67 of the Act for the amount of **\$4540.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

So as to perfect the parties' agreement respecting the tenancy, **I grant an Order of Possession** to the landlord **effective November 30, 2016**. The tenant must be served with this

Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**Conclusion**

The tenant's application in relevant part has been granted.

The landlord is given an Order of Possession pursuant to the parties' agreement.

**This Decision is final and binding on both parties.**

*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: November 15, 2016

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Residential Tenancy Branch