



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      DRI, MNDC, FF, O

### Introduction

This matter dealt with an application by the Tenant to dispute a rent increase, monetary compensation for damage or loss under the Act, regulations or tenancy agreement, to recover the filing fee and other considerations.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 1, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

### Issues(s) to be Decided

1. Is the Landlord entitled to the rent increase and if so how much is the rent?
2. Is the Tenant entitled to monetary compensation or a rent reduction and if so how much?

### Background and Evidence

This tenancy started on May 1, 2007 as a month to month tenancy. The Tenant is living at the rental unit. Rent is \$625.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$300.00 on May 1, 2007.

The Tenant said that the Landlord gave her a Notice of Rent Increase on January 25, 2009, increasing her rent from \$575.00 to \$625.00 which is an increase of \$50.00 or 8.7%. The Tenant also said the Landlord has issued another Notice of Rent increase dated February, 17, 2011 increasing the rent from \$625.00 to \$675.00 which was an increase of \$50.00 or 8%. The Tenant said that both these rent increases are more than the allowable rent increases under the Residential Tenancy Act and she has applied for monetary compensation from the Landlord to reimburse her for the over payment of rent since May 1, 2009.

The Tenant said she has paid \$28.72 per month more than the allowable rent increase for 23 months. The Tenant continued to say the total amount of overpayment of rent is \$660.56 (\$28.72 X 23 months = \$660.56) since May 1, 2009.

The Tenant also said the Notice of rent increase dated February 17, 2011 is invalid because it is for more than the allowable rent increase established by the Residential Tenancy Branch and if she is successful with this application the rent amount is also incorrect. She said the rent amount should be \$596.28 from May 1, 2009 to the present.

### Analysis

The Act says:

#### **Rent increases**

**s. 41** A landlord must not increase rent except in accordance with this Part.

#### **Timing and notice of rent increases**

**s. 42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

#### **Amount of rent increase**

**43** (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) 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.

In this situation the Landlord has complied with the Act in all areas except the calculation of the amount of rent increase. The Landlord increased the rent by \$50.00 or 8.7% on her Notice of Rent Increase dated January 25, 2009. The maximum rent increase allowed for 2009 was 3.7 % or in this case  $\$575 + (\$575.00 \times 3.7\%) = \$596.28$ . The new rent should have been established at \$596.28 for 2009. Given that the Tenant has been paying \$625.00 since May 1, 2009 she has made rent over payments of  $\$625.00 - \$596.28 = \$28.72$  for 23 months. I find in for the Tenant and I award the Tenant \$28.72 for 23 months for overpayment of rent in the amount of  $(\$28.72 \times 23 = \$660.56)$  \$660.56.

In addition I find the Tenant has established grounds to prove the Notice of Rent Increase dated February 17, 2011 is invalid as the current rent amount is incorrect and the rent increase is above the allowable increase in rent. I Order that the rent amount is \$596.28; it is in effect as of May 1, 2009 and will continuing as of April 1, 2011 until a valid change in rent is issued to the Tenant.

As the Tenant has been successful in this matter I award the recovery of the filing fee for this proceeding of \$50.00 from the Landlord to the Tenant and; pursuant to section 67 a monetary order for \$710.56; representing \$660.56 in overpayment of rent and the \$50.00 filing fee.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 67 and 72 of the Act, I grant a Monetary Order for \$710.56 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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*.

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Residential Tenancy Branch