



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** MNDC

### **Introduction**

This application was brought by the tenant seeking return of two months over payment of rent imposed after a new landlord purchased the rental building.

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

This matter requires a decision on whether there was a rent overpayment and whether the applicant is entitled to a Monetary Order.

### **Background and Evidence**

The applicant had been a resident of the rental unit since July 1, 2003 in the home owned by her parents. The rental property was sold with the new owner taking possession on May 1, 2008.

On taking over the property, the landlord had the tenant sign a new rental agreement which raised the rent from \$800 per month to \$1,250 per month. In addition, the parties apparently reached a verbal agreement by which the tenant would pay an additional \$65 per month toward utilities.

During the hearing, the tenant gave evidence that she had signed the new rental agreement under duress. She said the duress arose from the fact that the previous landlords urgently needed to sell the rental property.

The new landlord had stated that he could not afford to buy the property at the tenant's former rent and the tenant stated that the sale depended on her agreement to the new rental agreement at the higher rent.

The landlord stated that the tenant's parents had been renting to her at well below market value which he believed to be more in the order of \$1,600 per month, and that completion of the purchase would have been untenable for him at the lower rent.

He stated that the tenant had moved out on July 28, 2008 without having paid the July rent and without having given notice.

The landlord stated that he had not wished to continue the tenancy, but that he had agreed to the nine-month fixed term agreement at the increased rent simply to allow the tenant more time to find new accommodation.

## **Analysis**

I initially considered that the higher rent represented an illegal rent increase. However, on further study, I find that by signing a new rental agreement, the parties had created a new tenancy and the landlord was not constrained by the time and percent limits imposed by section 42 of the *Act*.

The tenant was not obligated to sign the new rental agreement and, by research or consultation with the Residential Tenancy Branch, she could have learned of her option to insist on proper notice of a rent increase. Instead, she chose to sign the new rental agreement.

The new landlord was in a position where by he acquired the rights and obligations of the former landlord and would have to have complied.

I find that the duress referred to by the tenant was not imposed on her by the landlord but by circumstances between the new landlord and the former landlord. Therefore, the tenant is not entitled to return of the claimed over payment.

However, on a careful reading of the new tenancy agreement, I find that it includes water, electricity and heat and makes no reference to the tenant having to pay for utilities. Therefore, I find that the tenant is entitled to return of the two months utilities surcharge of \$65 per month that was omitted from the rental agreement.

## **Conclusion**

Accordingly, the tenant's copy of this decision is accompanied by a Monetary Order for \$130 for service on the landlord.

January 20, 2009.

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Dispute Resolution Officer