



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes CNL, OLC, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to obtain an order to have the landlord comply with the *Residential Tenancy Act (Act)*, cancel a notice to end tenancy, and to reinstate a service.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent. The agent was only authorized by the landlord to request an adjournment of the hearing.

Prior to the hearing, the landlord had provided a written request to adjourn the hearing as she would be on an airplane returning from another city at the time of this hearing. The file also showed the tenant had agreed to an adjournment; however the dates provided to the parties by the Residential Tenancy Branch were unacceptable to the tenant.

At the outset of the hearing the landlord's agent requested the adjournment. As the next available hearing date would be beyond the effective date of the notice to end tenancy the tenant was not willing to adjourn. As well, the landlord has submitted documentary evidence to the hearing and could have arranged to have her agent represent her full interests.

And finally, there are two landlords listed on the tenant's Application. I attempted to contact the other landlord during the hearing, but she was not available. As the applicant was not in favour of an adjournment and as I find the landlord had an opportunity to have alternate representation the request for an adjournment I dismiss the request for adjournment.

The tenant requested to amend his application to exclude the request to reinstate cable services, as this issue has been resolved.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to an order to have the landlord comply with the *Act* regarding rent increases; and to recover the filing fee from the tenant for the

cost of the Application for Dispute Resolution, pursuant to sections 42, 43, 49, 67, and 72 of the *Act*.

### Background and Evidence

The tenant submitted into evidence the following documents:

- A copy of a tenancy agreement and addendum signed by the tenant and the previous owner/landlord on August 26, 2008 for a 6 month fixed term tenancy that converted to a month to month tenancy on March 1, 2009 for a monthly rent in the amount \$750.00 due on the 1<sup>st</sup> of the month, including all utilities, a security deposit of \$375.00 was paid on August 20, 2008;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 22, 2009 with an effective vacancy date of February 28, 2010, citing the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant;
- Details of the dispute dated January 4, 2010;
- A copy of a letter from the landlord to the tenant dated November 29, 2009 stating that the landlord is going to convert the tenant's one bedroom rental unit into a two bedroom rental unit and effective February 1, 2010 the rent will be increased to \$1,200.00;
- A copy of a letter from the landlord to the tenant dated November 30, 2009 stating that the landlord is going to convert the tenant's one bedroom rental unit and part of the main floor into a two bedroom rental unit and effective February 1, 2010 the rent will be increased to \$1,175.00 plus 40% of the total house utilities;
- A copy of a letter from the tenant to the landlord dated December 17, 2009 responding to the landlord's two previous letters;
- 4 photographs of the interior of the rental unit; and
- A copy of the landlord's request to the Residential Tenancy Branch for an adjournment, dated January 9, 2009.

The landlord submitted a letter dated January 23, 2010 with details of the dispute, a copy of her plane ticket confirming the date and time of her flight during the hearing; an invitation to her daughter's wedding.

In the letter dated January 23, 2010 the landlord states that she doesn't need permits for the planned renovations because she is removing all the old carpet and replacing the flooring with hardwood and she wants to paint the walls. The landlord goes on to say that once completed she wants to rent the rental unit to her daughter.

The tenant testified that there was no need to make the changes, he felt the rental unit did not need any renovations and although the plan to convert the one bedroom to a two bedroom unit was not part of the tenant's documentary evidence, the tenant also stated that he did not need the rental unit be increased in size.

### Analysis

Section 42 of the *Act* outlines requirements for the timing and notice of rent increases. The section requires the landlord to provide notice of a rent increase 3 months prior to the effective date. As the two notices of a rent increase were provided to the tenant on November 29 and 30, 2009 respectively, the earliest effective date of a rent increase could have been March 1, 2010.

As well, this section requires the landlord provide the notice in the approved form, as provided on the Residential Tenancy Branch website. The landlord provided the notice in a handwritten format.

Section 43 states a landlord may impose a rent increase only up the amount calculated in accordance with the regulations or if ordered through the Dispute Resolution process after the landlord has made an application to increase the rent in an amount greater than the amount calculated in accordance with the regulations.

While the landlord is entitled to make improvements to the rental unit, the landlord cannot unilaterally use the fact that improvements were made to increase the rent by 65%. I order that should the landlord wish to impose a rent increase she comply with the applicable sections of the *Act*.

Section 49 of the *Act* allows the landlord to end the tenancy to renovate or repair the rental unit a manner that requires the rental unit to be vacant. By the description of the renovations provided by the landlord, I am not persuaded that the renovations planned by the landlord require vacancy of the rental unit.

### Conclusion

As the landlord has failed to show that the renovations planned require vacancy of the rental unit, I cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on December 22, 2009 and find the tenancy in full force and effect.

As the tenant was successful in his application I find that he is entitled to the recovery of the filing fee for this hearing. In accordance with Section 72 (2)(a) of the *Act*, I order the tenant to deduct the \$50.00 filing fee from one future rent payment.

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: February 12, 2010.

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Dispute Resolution Officer