



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OTHER

### Introduction

This matter dealt with an application by the Tenants to determine the rent of the rental unit.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on August 16, 2010. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

It should be noted that the Landlord was aggressive during the hearing and was told not to interrupt the Tenant when she was speaking a number of times. As well, he was asked once to conduct himself in a respectful manor. The Landlord did comply after being asked a number of times.

### Issues(s) to be Decided

1. What is the rent of the rental unit that the Tenant occupies?

### Background and Evidence

This tenancy started in October, 2009. The Tenant was hired as the building manager and she rented the unit as part of her employment. Rent was \$600.00 per month and there was no security deposit required. Rent was due on the 1st day of each month. Both the Tenant and the Landlord said there is no written tenancy agreement or employment contract. The arrangements were verbal.

The tenants said the rental unit was rented to her at \$600.00 per month and she understood that there was a discount on the rent from the market rate as part of the employment. She indicated that she had paid \$600.00 per month from November, 2009 to July, 2010. She said she did not know the value of the market rent of the unit or the amount of discount that she was receiving due to her employment by the landlord.

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The Tenant said her employment ended in July of 2010. The written notice from the Landlord ended the employment as of July 31, 2010, but she ceased her duties and returned the keys, cards and paper work as of July 22, 2010.

The Tenant continued to say that her rent increased to \$1,200.00 as of August 1, 2010. She said the Landlord verbal informed her of the rent increase on August 22, 2010 and deducted the August, 2010 rent from her final pay check. She said she contested the rent increase to the Landlord and then applied to the Residential Tenancy Branch for dispute resolution.

The Tenant continued to say that she paid \$1,200.00 of rent to the Landlord for September, 2010, but included a letter that protested the amount.

The Landlord said that he has a number of rental units and it is his policy to rent units at 50% of the market rate to his employees. He said that when the Tenant took the job he first offered a different unit for \$400.00 rent per month which was  $\frac{1}{2}$  of the market rent for that unit, but the Tenant did not want to be on the ground floor so he offered her the unit she is in now for \$600.00 rent per month. The Landlord stated that he told the Tenant the unit would rent for \$1,200.00 normally and that she could rent it for \$600.00 as part of the employment arrangement. The Landlord continued to say that he believes the Tenant understood this arrangement from the start of the tenancy. The Landlord said that when the employment ended July 22, 2010, he did not review the terms of the tenancy with the Tenant as he believed she understood the arrangement. The Landlord said he had a witness to this, but she was out of the country at the time of the hearing.

The Landlord said he would be willing to continue the tenancy with the Tenant at a rent of \$1,200.00 per month.

Both the Landlord and the Tenant said that there is no written tenancy agreement, no written employment contract and no written agreement on how the amount of rent was established or calculated between the Tenant and Landlord.

## Analysis

Section 13 (1) states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

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- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
  - (i) the date on which the tenancy starts;
  - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
  - (iii) if the tenancy is a fixed term tenancy,
    - (A) the date the tenancy ends, and
    - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
  - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
  - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
  - (vi) which services and facilities are included in the rent;
  - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

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There is no written tenancy agreement or employment contract explaining how the Tenant's rent was established or calculated or what it would be at the end of the employment if she continued to inhabit the rental unit. As well, there is contradictory evidence and oral testimony regarding what the amount of rent should be at the end of the Tenant's employment. Given the lack of written proof, I find that the rent is established by the previous agreed rental amount of \$600.00 per month. This rental amount was agreed to by the Landlord and Tenant at the beginning of the tenancy and is the amount that has been paid from November, 2009 to July 2010. As well, the Tenant has paid \$1,200.00 rent for August, 2010 and \$1,200.00 rent for September, 2010, therefore she has overpaid by \$600.00 per month. I Order that the Landlord pay to the Tenant \$1,200.00. The Tenant may receive this payment by deducting it from future rent or other payments to the Landlord or by direct payment from the Landlord to the Tenant.

### Conclusion

Pursuant to the above, I find the rental amount for the rental unit is \$600.00 per month. As well I order the Landlord to pay the Tenant \$1,200.00 for overpayment of rent, which can be paid directly to the Tenant or the Tenant can apply it to future rent payments. If the Landlord does not comply the Tenant may apply to the Residential Tenancy Branch for a Monetary Order.

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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