



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      DRI MNDC OLC RR FF

### Introduction

This hearing dealt with an application by the tenant to dispute a rent increase, as well as for monetary compensation, an order that the landlord comply with the Act, and a reduction in rent. Both the tenant and the landlord participated in the teleconference hearing and provided testimony under affirmation.

### Issue(s) to be Decided

Did the landlord increase the rent in a way permitted under the Act?

Is the tenant entitled to monetary compensation?

Should the landlord be ordered to comply with the Act?

### Background and Evidence

The evidence of the tenant was as follows. He has been a tenant in his unit, one of four rental units in a house, for 10 years. His rent has always included all utilities, since the beginning of the tenancy. His current rent is \$875. There is no written tenancy agreement, only a verbal agreement.

The new landlord purchased the house and took over as landlord in November 2010. On December 1, 2010, the landlord came to collect rent and gave the tenant a Notice of Rent Increase in the amount of \$85, effective immediately. The landlord said this was not a rent increase but a “utility increase.” The tenant paid the landlord the additional \$85 for December 2010. In January 2011, the tenant refused to pay the additional \$85, as it was not a valid rent increase under the Act. On January 14, 2011, the heating system was shut off in the tenant’s unit. The tenant called Terasen Gas and confirmed that the landlord had not paid the bill. The tenant contacted the landlord, who told the tenant to pay him \$75 immediately, and the landlord would have the gas turned back on. The tenant paid the landlord \$75, and the gas was turned back on.

The tenant has applied to have the \$160 returned to him, and for an order that the landlord comply with the Act by issuing a notice of rent increase in accordance with the Act.

The response of the landlord was as follows. The landlord acknowledged that he received \$85 from the tenant on December 1, 2010 and \$75 on January 14, 2011, to pay for increased utility costs. The landlord also acknowledged that the gas in the tenant's unit was cut off on January 14, 2011, but that was because the landlord forgot to have the account put in his name, and it was still in the previous owner's name.

### Analysis

I accept the testimony of the tenant regarding the inclusion of utilities in his rent. When the owner purchased the property, he was bound by the terms of the verbal tenancy agreement. A landlord cannot change the terms of a tenancy agreement to separately bill the tenant for utilities unless both the landlord and the tenant agree to such a change. In this case, I find that the tenant did not agree to be billed separately for utilities. I therefore find that the additional payments the landlord received from the tenant must be characterized as additional rent.

Under section 43 of the Act, a landlord may only increase the rent up to the amount calculated in the regulations, unless the landlord either applies to the Residential Tenancy Branch for an order allowing an increase beyond the allowable amount, or obtains the tenant's agreement in writing. Further, the notice must be issued at least three full calendar months before it takes effect. The landlord gave the notice on December 1, 2010, and it therefore could not take effect before April 1, 2011. In 2011, the maximum allowable rent increase is 2.3 percent. In this case, the notice of rent increase is invalid because it exceeds the permissible amount and it was not issued at least three full calendar months in advance. When the landlord collects a rent increase that does not comply with the legislation, the tenant may seek to recover the increase. I find that the tenant is entitled to recovery of the \$160 overpayment.

### Conclusion

I order the landlord to comply with section 43 of the Act, which prescribes the method by which a landlord may increase rent.

I grant the tenant recovery of the \$160 overpayment of rent. As the tenant's application was successful, he is also entitled to recovery of the \$50 filing fee for the cost of this application. The tenant stated that he preferred to receive a monetary order rather than deduct this cost from his next month's rent. I accordingly grant the tenant an order under section 67 for the balance due of \$210. This order may be filed in the Small Claims Court and enforced 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*.

Dated: February 9, 2011.

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Residential Tenancy Branch