



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. The tenancy began in March 2010, with monthly rent in the amount of \$750 including utilities. There is no written tenancy agreement, only a verbal agreement.

The new landlord purchased the house and took over as landlord in November 2010. The tenant was away on December 1, 2010, so she left her rent payment with one of the other tenants to forward to the landlord. On December 8, 2010, the landlord told the tenant that she would have to pay an additional \$75 for hydro. The tenant paid the landlord \$75. The tenant did not receive a notice of rent increase from the landlord. In January 2011, the tenant refused to pay the additional \$75. On January 14, 2011, the heating system was shut off in the tenant's unit. The landlord 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 \$150 returned to her, 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 \$75 from the tenant on December 8, 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 her 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. Further, when a landlord and tenant agree to separately bill for utilities, there is in most cases a corresponding reduction in the rent. For example, if the tenant agrees to pay an additional \$75 for utilities, there is an agreement that the rent will be reduced by that amount. I therefore find that the additional payments the landlord received from the tenant in this case must be characterized as additional rent.

I accept the tenant's testimony that the landlord did not serve her a notice to increase rent. 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 \$150 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 \$150 overpayment of rent. As the tenant's application was successful, she is also entitled to recovery of the \$50 filing fee for the cost of this application. The tenant stated that she preferred to receive a monetary order rather than deduct this cost from her next month's rent. I accordingly grant the tenant an order under section 67 for the balance due of \$200. 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.

Residential Tenancy Branch