



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, FF

Introduction

This hearing dealt with an application by the tenant to order the landlord to comply with the Act, provide services of facilities and recovery of the filing fee. Both parties attended the hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

The landlord and tenant verbally entered into a 3 month tenancy starting April 2011 with monthly rent of \$1000.00 and the tenant paid the last month's rent of \$1000.00. The landlord and tenant then verbally renewed their tenancy agreement effective July 2011 with monthly rent of \$1200.00. The tenant in May 2011 paid the landlord an extra \$200.00 so that the landlord then held last month's rent of \$1200.00. The tenant has not paid a security deposit.

The tenant testified that on September 30, 2011 the landlord sent the tenant a letter stating that due to the cost of gas for heating the rental unit that the landlord was raising the rent from \$1200.00 to \$1350.00 effective November 1, 2011 and that if the tenant gets a roommate the rent will increase to \$150.00 per month. The tenant stated that the landlord had already incurred a rent increase of \$200.00 2 months after he took possession of the rental unit however the tenant agreed in this hearing that the \$1200.00 rent was based on a new verbal tenancy agreement.

The tenant stated that the landlord then on November 7, 2011, called to have the gas service to the rental unit cut off and disconnected. The gas remains connected at this time and is dependent upon the status of the outcome of this hearing. The tenant and landlord acknowledged that throughout the entire time of the tenancy the gas has been in the landlord's name and paid for by the landlord. The tenant stated that he was not able to put the gas bill in his name due to past issues with the gas company.

The landlord testified that she never intended the tenant to stay in the rental unit long term otherwise she would not have rented the property to him for \$1200.00. The landlord was insistent that this was a short term tenancy only and acknowledged that there is no written tenancy agreement stating this. The landlord stated that she entered into this agreement verbally and had not provided a written rental agreement only because at the time she was leaving on vacation.

The landlord stated that with the reduced rent she should not now also have to pay for the gas for the furnace however acknowledged that there is no written agreement regarding which party would pay for the gas. The landlord stated that as this was a short term tenancy she should be able to raise the tenant's rent as required. The landlord then commented that she would move to evict the tenant.

Both parties acknowledged that the landlord holds 'last month's rent' in the amount of \$1200.00 and that there was no security deposit paid by the tenant. Both parties agreed in this hearing that per section 19 of the *Act* the landlord will hold \$600.00 of this money as a security deposit and that the \$600.00 balance will be applied to the January 2012 rent.

The tenant and landlord in this hearing agreed that the landlord will leave the gas bill in the landlord's name and that effective January 1, 2012 the tenant will be responsible for paying the gas bill.

Analysis

Based on the documentary evidence and testimony of the parties I find that the tenant has met the burden of proving that they are entitled to an order for the landlord to comply with the *Act* and provide services or facilities required by law.

The landlord, in contravention of sections 41, 42 and 43 of the *Act* gave the tenant 'notice' of a \$150.00 per month rent increase to take effect November 2011. For the calendar year of 2011 the Residential Tenancy Branch has set the allowed rent increase at 2.3% and the *Act* allows a landlord to increase rent once every 12 calendar months and only on the approved form.

The tenant's rent at the start of this tenancy in July 2011 was set at \$1200.00 and will remain \$1200.00 until such time as the landlord per the *Act*, provides the tenant with proper notice of a rent increase.

I therefore Order that the landlord comply with sections 41, 42 and 43 of the *Act* in regards to rent increases.

The landlord also provided the tenant with a rent receipt for December 2011 noting a shortage of \$150.00 which is incorrect and the landlord has agreed to issue the tenant a new receipt for December 2011 reflecting the correct amount of rent which is \$1200.00.

Residential Tenancy Act section **41 Rent increases** speaks to:

A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

Residential Tenancy Act section **42 Timing and notice of rent increase** speaks to:

(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Residential Tenancy Act section **43 Amount of rent increase** speaks to:

(1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The \$1200.00 'last month's rent' that the landlord is holding is violation of section 19 of the Act therefore the landlord will hold \$600.00 as a security deposit for the rental unit and the \$600.00 balance will be applied to the January 2012 rent.

Residential Tenancy Act section **19 Limits on amount of deposits** speaks to:

(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

The landlord would be in contravention with section 27 of the Act had the landlord disconnected the gas service to the rental unit however gas service to the rental unit remains in place. To withhold a service or facility that is essential to the tenant's use of the rental unit, a landlord must provide proper written notice of the termination of the facility on the approved form and reduce the tenant's rent in an amount equivalent to the termination of the facility. From the start of the tenancy the landlord has paid for the gas to the rental unit and a landlord, without agreement from the tenant, cannot simply start making the tenant pay for a service or facility that the landlord was originally providing as part of the tenancy.

I therefore Order that the landlord comply with section 27 of the Act in regards to terminating or restricting services or facilities.

The landlord has agreed to keep the gas bill in their name and effective January 2012 the tenant agreed that he will be responsible for paying the gas bill in full; this payment will be due to the landlord within 10 days after receiving the bill from the landlord.

The tenant will not be responsible for paying any portion of the gas bill for 2011.

Residential Tenancy Act section **27 Terminating or restricting services or facilities**

(1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby Order the landlord to comply with sections 41, 42 and 43 of the Act regarding rent increases.

I hereby Order the landlord to comply with section 27 of the Act regarding terminating or restricting services or facilities.

The tenant may deduct \$50.00 from future rent owed to the landlord for recover of the filing fee paid to bring their application.

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: December 20, 2011.

Residential Tenancy Branch