



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI and O

Introduction

This hearing was convened on the tenant's application of July 13, 2012 to contest a Notice of Rent Increase issued on April 29, 2012 to take effect on August 1, 2012, and to request return of overpayment based on a defective Notice of Rent Increase dated April 27, 2011.

Issue(s) to be Decided

Are either or both of the notices defective in such a way as to nullify the current notice and warrant repayment of increased rent paid under the first notice?

Background and Evidence

This tenancy began on February 28, 2010 under a 12-month fixed term agreement at rent of \$1,200 per month plus 50 percent of utilities. The tenant paid a security deposit of \$600 at the beginning of the tenancy. The rental unit is the upper unit in a home with two basement suites.

During the hearing, the applicant tenant referred to clause 8. of the rental agreement which provides that the tenant is responsible for 50 per cent of "all utilities and/or services supplied to the premises." Based on equalized billings, the clause sets the monthly payment at \$200.

The tenant notes that a three-month Notice of Rent Increase served on April 27, 2011 applied the 2.3 percent allowable increase that year to the total \$1,400 of both rent and utilities, raising the combined value to \$1,430 per month.

A year later on, on April 29, 2012, the tenant received another notice of rent increase, again combining rent and utilities for a total increase from \$1,430 to \$1,500, thereby compounding the increase in utilities along with the rent increase.

The tenant stated that she had never received copies of utilities billings until after she had served the landlord with the present Notice of Hearing, although she stated she had been led to believe she would be provided with monthly statements..

In a letter to the tenant dated May 9, 2012, the landlord advised the tenant that the 2.3 percent 2011 notice was the equivalent of raising the rent from \$1,200 to \$1,227 and the utilities from \$200 to \$203.

Similarly, he stated that the 2012 notice intended to raise the rent from \$1,227 to \$1,279 and utilities from \$203 to \$221 per month.

Analysis

Rental agreements may be written to set a monthly rent with utilities included, in which case a Notice of Rent Increase can be applied to the total amount.

However, in the present matter, the rental agreement clearly sets utilities apart and requires the tenant to pay 50 per cent. Unfortunately, the agreement is somewhat ambiguous in then setting a monthly payment of \$200 and is silent on the timing and frequency of reconciling payments against billings and revision of the monthly payment.

The separation of rent and utilities payments is further defined at section 46(6) of the Act which provides that unpaid utilities may only be treated as unpaid rent 30 days after the landlord has provided the tenant with a written demand for payment.

As to the overpayment for 2011, the landlord agrees that the error resulted in the tenant paying \$36 more than allowed under the rent increase regulations and that the tenant may withhold that amount from future rent, as the tenant is entitled to do under section 43(5) of the *Act*.

As to the Notice of Rent Increase of April 29, 2012, I find that it should have been presented as the allowable 4.3 percent increase applied to the \$1,227 rent that should have been expressed for 2011, or \$1,279.76 rather than the \$1,500 including utilities as stated on the Notice.

Therefore, I find that the three-month Notice of Rent Increase of April 29, 2012 to take effect on August 1, 2012 is defective as to amount and is of no force or effect. The landlord serve a new three-month notice which conforms to the rental agreement and the legislation.

Conclusion

The tenant may withhold \$36 from future rent to recover the overpayment for 2011.

The Notice of Rent Increase of April 29, 2012 is nullified due to the error in amount and the landlord may serve a new three-month notice based on rent alone.

It remains for the parties to resolve the question of utilities payments.

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: September 25, 2012.

Residential Tenancy Branch