



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** OLC

### **Introduction**

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking to force the landlord to comply with the Act with respect to a rent increase not properly implemented in accordance with the Act and an order to restore a facility or service wrongfully terminated by the landlord.

### **Issues to be Decided**

Should the landlord be ordered to comply with the Act in regard to the rent being charged and inclusion of utility services?

### **Background and Evidence**

The parties testified that this tenancy originally began on October 15, 2011. Rent was \$1,300.00 due on the 15<sup>th</sup> day of each month and utilities were included in the rent.

Submitted into evidence were copies of communications, written testimony, a copy of a Notice of Rent Increase for \$56.00 effective on November 15, 2012 and a written Notice Terminating a Service or Facility. No tenancy agreement was in evidence.

With respect to the disputed rent increase, the tenant testified that, during the tenancy, the landlord attempted to raise the rent by \$200.00, but had not issued a valid notice of rent increase on the proper form. The tenant testified that she told the landlord to follow the Act relating to imposing rent increases. The tenant testified that she then received a Notice of Rent Increase for \$56.00 purporting to be effective on November 15, 2012.

The tenant also testified that the landlord suddenly notified her in a note that utilities would no longer be included in her rent. The tenant testified that after she objected to this idea, she received a formal Notice Terminating or Restricting a Service or Facility on a form dated August 5, 2012. The tenant pointed out that the portion of this form dealing with the appropriate rent reduction, to reflect the termination of included utilities, had been crossed out by the landlord.

The tenant is seeking an order to force the landlord to comply with the rent provisions of the Act and to remove charges for utilities that were to be included under their contract.

The landlord testified that it was her right to ensure her rental operation was viable by increasing the rent and decreasing her other costs, such as utilities. The landlord stated that she should be free to make business decisions without being unduly restricted.

The tenant also gave testimony about problems with the other renter in the building with respect to his dog and his conduct. The landlord informed the tenant that this other tenancy was terminated as of the end of the month.

## **Analysis**

### **Additional Rent Increase**

With respect to the claim about the alleged additional rent increase, the tenant testified that the landlord had increased the rent from \$1,300.00 per month to \$1,356.00 per month, effective November 15, 2012, an increase of \$56.00 on the applicable form. .

Section 43 (1) of the Act states that 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.

Section 43(2) states that a tenant may not make an application for dispute resolution to dispute a rent increase calculated in compliance with the Regulations.

With respect to the issue of whether this landlord had calculated the rent increase in compliance with the Act and Regulation, I find that for 2012, the allowable percentage is 4.3%. In this case the maximum increase to rent of \$1,300.00 would be limited to \$55.90, which would result in an allowable rental rate of \$1,355.90 per month. Given the above, I find the landlord's attempt to increase rent to \$1,356.00 does not fall within the allowable limit above and therefore the Notice of Rent Increase must be cancelled.

### **Terminate Facilities and Services**

Section 6 of the Act states that all of the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement. Section 6 also states that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute about the terms of the agreement.

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

In this instance, I find that the parties contracted for a tenancy in which the utilities were included in the rent and this is an enforceable term of the tenancy unless changed in the manner described in section 27, below.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

However a service or facility, other than an essential or material one may be restricted or terminated provided that 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. (my emphasis)

In this instance, the landlord issued a form that purported to change the term that included utilities in the rent. However, the landlord's intent is to receive additional compensation by eliminating the inclusion of utilities without lowering the rent to compensate for the restriction of this service. I find that the landlord is not in compliance with section 27 of the Act and the Notice is cancelled and of no force nor effect.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the rent for the unit is \$1,300.00, unless and until the landlord imposes a valid Notice of rent increase that complies with the Act and Regulations.

I find that utilities are included in the above rent in accordance with the tenancy agreement.

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 17, 2012.

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Residential Tenancy Branch