



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, RR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to have the landlord comply with the Act, and to authorize the tenants to change the locks to the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?  
Should the tenant be authorized to change the locks to the rental unit?

### Background and Evidence

The tenancy began on March, 1, 2012. Rent in the amount of \$780.00 was payable on the first of each month. A security deposit of \$390.00 was paid by the tenants. The tenants are to pay 40% of the utilities.

The tenant testified that the landlord is over charging them on utilities, and receiving 130% between the three units. The tenant stated he believed the costs of utilities were divided between the three units.

The tenant testified he would like permission to change the locks on the rental unit, as the landlord enters his unit without providing proper notice. The tenant stated he wants the landlord to comply with the Act.

The landlord testified that the tenants combined are paying 130% for utilities, and she has calculated that extra amount to cover her costs of doing business.

The landlord testified that the tenants have always received written notice that she would be entering their rental unit. Filed in evidence are copies of written notices.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the landlord has admitted that she is receiving 30% over and above the actual cost of utilities in order to recover her cost of doing business.

I find that the landlord's action of collection an amount over and above the actual cost of the utilities is providing the landlord with an unjust enrichment.

I order, the landlord to recalculate the utility percent attached to the units, so the amount does not exceed 100%. As an example:

Rental units that share the utility	
Unit #2	40%
Unit #3	30%
Total	100%

The landlord is required to comply with my order, no later than November 15, 2012

Further, for any unjust enrichment the landlord has received for overpayment of the utilities, the landlord is to provide compensation to the tenants no later than December 1, 2012. If the landlord fails to comply with this order, the tenants are at liberty to apply for monetary compensation.

The evidence of the tenant was that the landlord is entering his unit without proper notice. The evidence of the landlord was proper prior written notice has always been provided to the tenants. The documentary evidence of the landlord supports written notice has been provided to the tenants.

However, for the benefit of both parties, the landlord is required to comply with Section 29(1) of the Act as set out below:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

### Conclusion

I order that the landlord to recalculate the utility percent attached to the rental units, so that the percent amount does not exceed 100% and unjustly enrich the landlord. The landlord is to comply with this order no later than November 15, 2012.

The landlord is to calculate the overpayments of utilities and compensate the tenants no later than December 1, 2012. The tenants are a liberty to apply for compensation should the landlord fail to return the overpayment of utilities.

The tenant's application to change the locks is dismissed. The landlord is required to comply with section 29 of the Act.

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: November 01, 2012.

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Residential Tenancy Branch