



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OLC, RP, LRE, AS, FF

### **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 and agreement.

### **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 on September 1, 2012 with a fixed term ending on August 31, 2013 and then converts to a month-to-month tenancy. Rent is \$1,675.00 and utilities are not included in the rent.

Submitted into evidence by the tenant were copies of communications, written testimony, copies of utility bills, a copy of a Notice of Rent Increase, photos and a copy of the tenancy agreement. The landlord submitted copies of communications, written testimony, photos, copies of utility bills, a copy of an Occupancy Permit and a copy of a move-in condition inspection report.

The tenant testified that his request for an Order to force the landlord to comply with the Act or tenancy agreement related to the following:

- attempting to terminate or change the terms of the tenancy outside the Act,
- amounts charged and manner of payment of utilities,
- neglecting to clean-up after contractors,
- not addressing outstanding repair issues to the rental unit,
- failing to provide promised equipment for lawn care,
- attempting to increase the rent not in accordance with the Act,
- entering the tenant's unit without proper notice,

- imposing restrictions on the tenant's right to have guests or additional occupants,
- interfering with the tenant's right to quiet enjoyment, and
- tampering with equipment in the tenant's laundry.

### Changing Terms of the Tenancy

The tenant testified that the landlord issued a written communication that notified the tenant that the tenancy would end at the end of the fixed term. A copy of this letter was in evidence. The landlord had prepared a new agreement for the tenant's signatures that would commence on September 1, 2013.

The landlord argued that because the fixed term for the tenancy would be ending on August 31, 2013, they decided to amend the terms for the new tenancy agreement to increase the rent to include the cost of yard maintenance, due to the tenant's neglect of the yard work in the past. The landlord was of the opinion that a rent increase was justified under these circumstances.

The landlord acknowledged that the current tenancy agreement provides that the tenancy will continue on a month-to-month basis after its expiry date of August 31, 2013. However, the landlord stated that one of the two co-tenants had moved out and the landlord is therefore taking the position that the continuation of this tenancy agreement was affected by the fact that one of the co-tenants vacated.

The tenant argued that this co-tenant has not permanently vacated the rental unit and is merely away working. The applicant/tenant present at the hearing also pointed out that, although this individual was named in the body of the agreement as his co-tenant, his signature was not on the agreement.

### Subletting & Adding Occupants

The tenant testified that they were given the impression by the landlord that, in order to add any other occupants or roommates, they would need to "sublet" a portion of the unit and this would require the landlord's approval.

Although the tenant apparently sought approval to add another occupant, the tenant stated that since that time, they have discovered that their tenancy agreement does not have a term restricting occupants. The tenant is of the opinion that there is no need to officially add any other occupant's name to the tenancy agreement nor create a "sublease" agreement. The tenant stated that he takes responsibility for the rental unit and for the tenancy. The tenant believes that the landlord has no right to interfere with the tenant's use of the rental unit and that the landlord has wrongfully restricted guests contrary to the Act.

The landlord's feels that the tenant's action in adding another occupant is tantamount to subletting the unit, and this would require permission and approval from the landlord or, in that alternative, a revised tenancy agreement between the parties to add the new occupant's name to the contract.

### Utilities

In regard to the utilities, the tenant acknowledged that, pursuant to the agreement they signed, the utilities were not included in the rent and the tenant confirmed that they did agree to pay for their own use of utilities. The tenant testified that the landlord required that the hydro be placed in the tenant's name, despite the fact that there is a second unit, to which the tenant has no access, wired on the same meter. The tenant pointed out that the two units should have separate meters, if the tenant is required to put the utility account in their name. Regardless of whether or not the other unit is occupied, the tenant does not feel that it is fair for them to pay the whole bill.

According to the tenant, when they discovered this unsatisfactory situation, they discussed the matter with the landlord and proposed paying a flat rate of \$174.00 for hydro every two months and \$203.40 for water every two months and the landlord accepted this proposal. A copy of the email conversation on this subject was in evidence.

The landlord testified that the utilities billed for the period in question reflected the tenant's actual use, because the other unit is vacant and all of the equipment and appliances are not drawing any power.

### Rent Increase

The tenant testified that the landlord attempted to impose a new rental rate at the end of the fixed term, that exceeded the amount permitted under the Act. The tenant testified that the landlord has also presented them with a Notice of Rent Increase in the amount of \$200.00 per month, effective September 1, 2013. A copy of this form was in evidence.

The tenant pointed out that, according to the terms in the tenancy agreement, their tenancy automatically converts to a month-to-month contract at the end of the fixed term.

The landlord testified that the current tenancy is for a fixed term which will expire on August 31, 2013. The landlord testified that, the reason he felt he a new rental rate could be imposed, is because the tenancy would now involve some different renters than the original agreement. The landlord testified that he is aware that one of the co-tenant's portion of the unit will be occupied by, or sublet to, a different person.

The landlord also pointed out that the tenant has not been complying with a term in the agreement that requires the tenant to maintain the lawn. The landlord testified that the additional cost of having the landlord arrange the landscaping is anticipated in the revised rental rate.

The tenant argued that they do not want, nor need, a new tenancy agreement. The tenant testified that they are willing to do the yard work. However, according to the tenant, the landlord failed to supply the yard maintenance equipment that he had promised, making it difficult for the tenants to properly maintain the yard. According to the tenant, this equipment includes a shovel, a trowel and a lawnmower.

The landlord agreed to furnish the equipment for the lawn maintenance.

### Other Issues

Another concern that the tenant expressed is that the landlord has been accessing the premises without first giving the tenant the required 24-hours written notice, thereby interfering with the tenant's quiet enjoyment of the rental unit.

The tenant also felt that their quiet enjoyment was compromised by the fact that the landlord was showing the unit to perspective renters even though the tenant was not planning to move out and intended to continue to reside in the rental unit.

The landlord stated that they had stopped showing the rental unit to potential renters and the landlord is aware of the requirement to provide written notice and will comply with the Act in this regard.

The tenant also alleged that the landlord neglected some outstanding repair issues needed to be done in the rental unit, failed to clean up the debris left by the contractors and tampered with the tenant's laundry facilities.

The landlord testified that he is willing to comply with the Act with respect to his obligations to provide notice, keep the unit in good repair and provide the facilities that are included in the tenancy agreement.

### Analysis

#### Analysis Fixed Term Tenancy

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

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

I find that this tenancy agreement does not require that the tenant move out at the end of the fixed term and therefore, under both the Act and the agreement, the tenancy automatically converts to a month-to-month tenancy when it expires.

In regard to the landlord's attempt to impose changes to the terms of the tenancy agreement, I find that section 14(1) states that a tenancy agreement may not be amended to change or remove a standard term at all. However, a tenancy agreement can be amended to add, remove or change a term other than a standard term but only if both parties agree. (my emphasis)

Therefore, I find that the landlord is not at liberty to require a new tenancy agreement with different terms than the existing agreement, and any rent increase must be in strict compliance with the Act and Regulations.

Analysis Subletting and Additional Occupants

In regard to the issue of "subletting" the unit or portion of the unit I find that it was established that the tenant did not intend to sublet the unit to a third party. In fact, I find that there no genuine issues about subletting involved in this dispute, because the tenant is still residing in the rental unit and has not entered into any sublet agreement to relinquish possession to a third party.

The tenant stated that the issue under dispute actually pertains to his right to allow additional occupants to reside in the rental unit, which the landlord was trying to forbid on the basis that this would require the landlord's approval or that it would contravene the Act or agreement.

However, I find that there is no term in the tenancy agreement requiring that only those named on the agreement are permitted to reside in the unit. I find that there is also no specific term in this tenancy agreement that requires new occupants to be added to the tenancy agreement, nor that they must be approved by the landlord.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Where the tenant is only allowing a guest, I find that, section 30 (1) of the Act, prohibits a landlord from unreasonably restricting access to a person permitted on the residential property by that tenant.

I find that, under the Act, provided that there is no agreed-upon tenancy terms dealing with specific issues, a tenant is relatively free to use a property for any lawful purpose that does not cause significant damage, does not unreasonably interfere with others, and does not create a significant liability for the landlord. This includes the right to allow other occupants to share the home, unless the tenancy agreement restricts occupants to the tenants named on the agreement or unless the number of occupants in the space violates health or safety bylaws.

### Analysis Utilities

In regard to the utilities, I find that, under the tenancy agreement, the utilities were not included in the tenant's rent. However, the requirement that the tenant must place the utility accounts in the tenant's name when the service is used by two units on the same meter, would not be a compliant term consistent with the Act.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or Regulations, b) the term is unconscionable, or c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (My emphasis).

I find that the landlord must place the utility accounts in the landlord's name and collect each unit's share of the bill.

In this instance, I find that the tenant's proposal that they pay a flat rate of \$174.00 for hydro every two months and \$203.40 for water every two months is reasonable and I find that the tenant genuinely believed that the landlord would accept this proposal. A copy of the email conversation on this subject was in evidence.

Accordingly, I find it appropriate that the tenants will pay the landlord a flat rate of \$174.00 for hydro every two months and \$203.40 for water every two months, or in the alternative an amalgamated amount of \$188.70 each month for utilities.

#### Analysis Rent Increase

With respect to the Notice of Rent Increase, purporting to increase the rent by \$200.00, and include landscaping services arranged by the landlord, I find that I find that this fixed term tenancy agreement will expire on August 31, 2014, after which it converts to a month-to-month tenancy having the same terms, unless both of the parties agree otherwise.

I find that an additional rent increase beyond the percentage normally allowed would require the tenant's written consent or a successful application for dispute resolution by the landlord seeking an additional rent increase under the Act.

For this reason, I find that the landlord's Notice of Rent Increase must be cancelled and is of no force nor effect.

Section 34 of the Act states that, unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

#### Analysis Repairs and Compliance with the Act

With respect to the tenant's complaint that the landlord neglected to clean-up after contractors and failed to complete repairs, the landlord agreed to look into these unresolved matters and address them.

#### Orders

Based on the evidence before me, I hereby make the following orders:

1. I order that the Notice of Rent Increase issued by the landlord is cancelled and of no force or effect.
2. I order that, pursuant to the tenancy agreement, this tenancy will convert to a month-to-month tenancy at the end of the fixed term, with the same terms.
3. I order that under the terms of this tenancy agreement the landlord is required to immediately place the shared utility accounts in the landlord's name.
4. I further order that, under this tenancy agreement, the tenants will pay a flat rate to the landlord for the cost of utilities in the amount of \$174.00 every two

months for hydro and \$203.40 every two months for the water and sewer.

5. I order that, under the terms of this tenancy agreement, the tenants are responsible for yard maintenance and the landlord will provide a shovel, trowel and lawnmower for this purpose.
6. I order that the landlord remove material left on the premises by the landlord's contractors and look into outstanding repair requests from the tenant.
7. I order that the landlord comply with the Act in giving the tenant 24 hours written notice prior to accessing the rental unit. I order that the parties restrict all communications between them to written form unless this is not possible.
8. Finally I find that the tenant is entitled to be reimbursed the \$50.00 cost of this application and I order that the tenant reduce the next rental payment owed to the landlord by this amount as a one-time abatement in rent.

### **Conclusion**

The tenant's application is partly successful and several orders that the landlord comply with the Act and tenancy agreement were granted.

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: May 22, 2013

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Residential Tenancy Branch



