



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** CNR, DRI, OLC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent and to dispute a noncompliant rent increase. The tenant seeks an order to force the landlord to comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Should the landlord be ordered to comply with the Act with respect to the rent increase?

### **Background and Evidence**

The tenancy began in January 2004. A copy of the tenancy agreement was in evidence showing that the rent was \$630.00 when the tenancy began. Also in evidence were copies of several rent increases issued over the years, a copy of the rental statement, copies of communications and a copy of a 10-Day Notice to End Tenancy for Unpaid Rent dated February 7, 2014, showing rental arrears of \$558.00.

The tenant stated that the landlord has given various amounts of arrears that they allegedly owe, but, according to the tenant, they have not been able to clarify what the current rental increase is and when it is effective. In addition, the tenant stated that the landlord has suddenly demanded parking arrears allegedly owed and is attempting to terminate the tenancy based on arrears that the tenant cannot understand.

The tenant testified that he was also overcharged for the key fob for the parking garage. and discovered that, although he paid \$140.00 deposit, others had only paid a \$20.00 deposit. The tenant testified that he was never issued with a receipt for the deposit. The tenant seeks a refund of \$120.00 for the extra deposit charges for the fob.

The landlord testified that they issued and served rent increase notices in accordance with the Act. The landlord stated that the rent increases issued to the tenant are clear and enforceable and the tenant is not at liberty to refuse to pay the rent.

The landlord testified that, although the tenancy agreement indicates no charge for parking, it was discovered that the tenant has been parking a second vehicle in the underground parking and the landlord feels entitled to charge retroactive payment for past usage at the rate of \$40.00 per month.

The landlord's position is that the tenant is not entitled to a refund of any portion of the key fob deposit.

## **Analysis**

### **Parking Charges**

With respect to parking, I find that the tenancy agreement does not show a specific amount in the space on the agreement where there would be a charge for parking. The paragraph only shows a horizontal line beside "parking". I accept the tenant's testimony that parking is included in the rent.

I do not accept that the included parking extends to two cars, because there is no indication on the agreement that the tenancy involves multiple vehicles. I find that the tenant must therefore pay for the extra parking space.

I find that, although the landlords have a right to charge for the extra parking spot, the landlord is not entitled to impose retro-active charges for parking fees in the past as "arrears", particularly as the matter was not brought up until recently.

Therefore, I find that no arrears are owed by the tenant for parking in the past, but the tenant must be prepared to pay now that they have been properly informed that the second parking spot is not included in the rent. I find that the tenant must start paying the landlord for the parking effective immediately at the normal rate charged for others in the complex.

In regard to the landlord's collection of the deposit for the key fob, I accept that the tenant was charged \$140.00 as a deposit approximately two years ago.

I find that section 6(1) of the Residential Tenancy Regulation states that, if a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is:

- (a) refundable upon return of the key or access device, and
- (b) no greater than the direct cost of replacing the key or access device.

Therefore, I find that the landlord must refund the extra \$120.00 deposit charged for the fob back to the tenant and retain only the normal charge of \$20.00.

With respect to the amount of arrears shown on the 10-Day Notice to End Tenancy for Unpaid Rent I find that the basis for the amount is not clear.

However, if any portion of the arrears include parking charges, I find that this is not supported by the Act. I find that parking fees are not rental arrears for the purpose of issuing a 10-Day Notice to End Tenancy for Unpaid Rent.

### Rent Increases

In reviewing the copies of the Notices of Rent Increase issued by the landlord, I find that some of the Notices do not comply with the requirements of the Act.

Section 43 of the Act states that a landlord may only impose a rent increase up to the amount calculated in accordance with the regulations, ordered on an application for an additional rent increase or agreed to by the tenant in writing.

Section 42 of the Act states that a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established under the tenancy agreement or after the last rent increase was made.

The Act also provides that the Notice of Rent Increase must be on the prescribed form, completed correctly in accordance with the Act and Regulation.

I find that the landlord's Notice of Rent Increase, raising the rent effective February 1, 2012 from \$740.00 per month to \$770.00 per month, was not valid because the form was not dated nor signed by the landlord.

I further find that the rent increase imposed prior to that, raising the rent from \$720.00 per month to \$740.00 per month, is not dated nor signed and also does not show the effective date of the new rate.

Due to the missing information on the Notice of Rent Increase form, I am not able to determine exactly when the landlord began charging the tenant the new rate of

\$740.00 per month from the previous rate of \$720.00 per month established in January 2008.

However, given that the Rent Increase form was incomplete and not compliant with the Act and Regulations, I find that the intended rent increase to \$740.00 per month is not enforceable.

I find that from January 1, 2008 onwards, the rent for the suite therefore remained at \$720.00 per month. I find that any and all further Notices of Rent Increase issued thereafter are not valid.

Accordingly, it follows that the tenant in this instance has been overpaying their rent for several years dating back to the first flawed Notice of Rent Increase issued after January 2008.

Section 43(5) of the Act states, *"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"*.

Based on the Act, I find that the tenant is therefore entitled to be credited with additional rent paid over and above \$720.00 per month from January 2008 onwards.

I order the landlord to calculate the amount of the tenant's overpaid rent since January 2008 and then apply the excess collected by the landlord to the tenant's rental account as a rent credit.

If the parties end up in a dispute over the precise amount of the overpaid rent, they are at liberty to make an application for dispute resolution regarding the amount of compensation warranted.

#### 10-Day Notice to End Tenancy for Unpaid Rent

Based on the evidence, I find that the 10-Day Notice to End Tenancy for Unpaid Rent must be cancelled due to the fact that the tenant has overpaid rent for a period of time in an amount yet to be calculated and credited to the tenant's rental account by the landlord..

Based on the evidence discussed above, I hereby issue the following orders:

- The 10-Day Notice to End Tenancy for Unpaid Rent dated February 7, 2014 is cancelled and of no force nor effect.

- Pursuant to the tenancy agreement, I order that free parking for one vehicle is included in the rent and the tenant must pay the rate charged by the landlord to park any additional vehicles, beginning immediately. I further order that no retro-active parking charges or outstanding arrears for parking are owed to the landlord to date.
- The landlord is ordered to refund to the tenant the excess \$120.00 charged for the key fob for the garage and is also ordered to retain the remaining \$20.00 paid as a refundable deposit. The landlord must issue the tenant with a receipt for this amount.
- The current monthly rental rate for the suite is set at \$720.00 per month and will remain at this rate unless and until a valid compliant Notice of Rent Increase takes effect.
- The landlord is ordered to calculate and credit the tenant's account with overpaid rent exceeding \$720.00 per month from January 2008 to date.
- The tenant is entitled to be reimbursed the \$50.00 cost of the application and is granted a monetary order for \$50.00.

### **Conclusion**

The tenant is partially successful in the application and the 10-Day Notice to End Tenancy for Unpaid Rent is cancelled. The landlord is ordered to apply a retro-active rent credit for overpaid rent due to a flawed Notice of Rent Increase. The terms of the tenancy agreement are interpreted to indicate that the rent includes free parking for one vehicle, but the landlord may charge for additional parking. Finally, the landlord is ordered to refund excessive deposit funds charged for a key fob.

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: April 02, 2014

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Residential Tenancy Branch

