



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order for the landlord to comply with the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on July 11, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant and an advocate for the tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The tenant's advocate testified on behalf of the tenant and stated that this month to month tenancy started in December, 2003. This was a verbal agreement between the tenant and the previous landlord. Rent is \$650.00 per month and is due on the 1st day of each month. The tenant testified that the verbal agreement was for the tenant to pay her own hydro bills but all other utilities including water have been paid by the landlord.

The tenant's advocate testified that this landlord became the landlord for the unit and on June 23, 2014 the landlord put a letter on the tenant's fence which stated that effective immediately the tenant must pay her own water bill of \$25.00 a month and must include it with the rent. The letter also states that it says in the tenancy agreement that utilities including water are not included in rent. The tenant testified that she has never had a written tenancy agreement and water has always been paid by the landlord.

The tenant's advocate testified that the landlord is attempting to enforce an illegal rent increase by trying to charge the tenant for water. The tenant seeks an Order for the landlord to comply with the *Act* with regard to rent increases.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's documentary evidence and sworn testimony before me of the tenant's advocate.

I refer the parties to s. 14(1) of the *Act* which states:

14 (1) *A tenancy agreement may not be amended to change or remove a standard term.*

The tenant's advocate gave undisputed testimony and stated that there was never a written tenancy agreement in place for this rental unit. I find the landlord has written to the tenant and claimed that the tenancy agreement does not include utilities such as water. The landlord has not appeared at the hearing or provided a copy of a tenancy agreement signed by the tenant and landlord to show that water is not included in the rent. Consequently, the landlord is not able to change the terms of an agreement whether or not it was written or verbal. I further find as the tenant has not paid water bills for the duration of the tenancy that this is an implied term of any verbal agreement and cannot now be altered by the landlord.

The landlord has asked for a \$25.00 a month increase to cover water bills I refer the parties to s. 42 of the *Act* which provides for rent increases and states:

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I find the tenant has established a claim for the landlord to comply with the *Act*. I therefore Order the landlord to comply with the s. 14(1) and 42 of the *Act* regarding rent

increases as the landlord is not entitled to change the terms of the tenancy agreement by imposing a charge for water of \$25.00 and I deem this to be an attempt to increase the rent without following the provisions of s. 42 of the *Act*. The allowable amount of a rent increase for 2014 is 2.2 percent and the allowable amount of a rent increase for 2015 is 2.5 percent after three months written notice on an approved form has been provided to the tenant.

Conclusion

The tenant's application is upheld. I ORDER the landlord to comply with s. 14 (1) and s. 42 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: September 12, 2014

Residential Tenancy Branch

