



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL OPL DRI PSF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) To find a rent increase illegal pursuant to section 43; and
- c) To obtain services required by law pursuant to section 27

Service:

The Notice to End Tenancy is dated March 10, 2015 to be effective May 15, 2015 and the tenant confirmed she received it. The tenant filed this Application for Dispute Resolution on April 17, 2015 and the landlord contends she is out of time to dispute the Notice. The tenant /applicant gave evidence that she served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

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

Is the dispute filed out of time pursuant to section 49 of the Act? If so, is the tenant entitled to an extension of time pursuant to section 66 of the Act? If so, has the landlord proved on the balance of probabilities that he requires the property for his own use pursuant to section 49?

Is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that she received an illegal rent increase? Is she entitled to have the utility services included in her rent?

### **Background and Evidence**

The tenant and the landlord's representative attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. Although the

tenant was late in filing her Application to dispute her Notice to End Tenancy, I find as fact that there are exceptional circumstances and I grant her request to extend the time pursuant to section 66. I find the circumstances of this case are exceptional as the husband and wife have been engaged in contested divorce proceedings wherein ownership of the property has been exchanged between the parties. As a result, the tenant was a tenant of the wife's and was bewildered when she received a Notice to End her Tenancy from the husband. Furthermore, it was a two month Notice to End Tenancy but it had no reasons provided for ending her tenancy.

The tenant also disputes a rent increase and utility charge imposed by the husband. In the hearing, the landlord's sister explained that the wife would not give any documents or information on the tenancy to the landlord so he did not know the current rent and had not received the security deposit. The tenant provided evidence that her current rent is \$350 a month and she said the wife had returned her security deposit to her. She agreed to pay the current landlord \$175 security deposit by June 4, 2015.

In evidence is a note from the landlord to the tenant stating her new rent will be \$400 and she will be expected to pay utilities now. The tenant disputes this as illegal.

Included with the evidence is the Notice to End Tenancy, three receipts given to the tenant by the wife for the tenant's monthly rent, a memo stating the rent increase, evidence of what another tenant pays for a room in the home and submissions of both parties. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to serve any Notice to End Tenancy on the correct form and complete it correctly according to section 52 of the Act. I find the Notice given to the tenant did not state the reason for ending the tenancy and so did not comply with section 52(d). I find the Notice is invalid and is cancelled. The tenancy continues.

I find the Memo stating a rent increase for the tenant is also invalid. Section 42 of the Act states that a tenant's rent may not be increased for at least 12 months after it is first established under the tenancy agreement. I find the tenant's evidence credible that her rent was established at \$350 when she entered into a tenancy agreement with the wife of the current landlord. Therefore, I find any increase prior to September 2015 is invalid. Although the landlord contended that the tenant's rent should be higher for the size of the room, I find this is irrelevant to this hearing. If the landlord wishes to raise

the rent above the legal limit, he must apply pursuant to section 43 and the Regulations for an additional rent increase. The legal limit for 2015 is 2.5%.

Furthermore, pursuant to section 42, a Notice of Rent Increase must be in the approved form and be given at least 3 months prior to the effective date of the increase. The approved forms are available online.

In respect to the requirement of the landlord that the tenant now pays utility bills in addition to rent, I find the tenant's evidence credible that utilities were included in her rent as she has some receipts in evidence. I find the definition of "rent" in section 1 of the Act includes any money agreed to be paid for the right to possess a rental unit and this includes utilities, if agreed. Therefore, I find the attempted addition of utility charges onto her monthly rent is an illegal rent increase and so is invalid. As explained to the parties in the hearing, if the husband manages to obtain a written tenancy agreement between his wife and this tenant and the agreement provides that it is rent "plus utilities", then the \$350 a month would not include the utilities and the cost of the utilities would be in addition to the monthly rent. However, the weight of the evidence as provided for this hearing is that the tenant's \$350 monthly rent includes her utilities.

For all of the above reasons, I find the tenant is successful in her Application to set aside the Notice to End Tenancy and in her dispute of the rent increase.

**Conclusion:**

I find the Notice to End Tenancy dated March 10, 2015 is set aside as it is invalid. The tenancy continues. I find the rent increase and addition of utilities are illegal increases. The tenant's rent remains at \$350 a month including utilities. No filing fee was involved.

**I HEREBY ORDER the tenant to pay \$175 security deposit to the landlord as agreed by June 4, 2015.**

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: June 02, 2015

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Residential Tenancy Branch

