



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy and to recover money paid under an alleged wrongful rent increase and for damages for loss of laundry service included in the tenancy.

The matter of the eviction Notice was resolved at the first hearing by the parties' agreement that the tenancy would end May 31, 2015 and the tenant would vacate on or before that date.

All agree that the tenant vacated on May 31, 2015 and provided a forwarding address in writing to the landlord on that day.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to the monetary award he seeks?

### Background and Evidence

The rental unit is one of two basement suites in the home of the landlord Ms. P.

There is a written tenancy agreement showing that the landlord is Ms. P. alone. At hearing it was indicated that the respondent Mr. L. was assisting her and "managing" the premises.

The tenancy started October 1, 2013. The rent was \$440.00 per month according to the tenancy agreement, due on the first of each month, in advance. The landlord holds a \$220.00 security deposit.

By a handwritten document dated February 1, 2104 entitled "NOTICE OF RENT INCREASE" the landlord wrote:

Regard about your sublet room share in BSMT of [address redacted] that a student occupied from May 1, 2013 to Sep. 30, 2013 then you moved in Oct. 1, 13 your current rent as [sic] \$440.00 will be increases [sic] \$20.00 from May. 1, 2014. The new rent will be \$460.00.  
Your understanding & co-operation is our [sic] very appreciated!

The tenant's rent was being paid direct to the landlord from the welfare office. The tenant arranged for welfare to pay the additional \$20.00 per month, starting May 1, 2014.

The tenant denies that he was "subletting."

He says that the rent increase was illegal and that he's overpaid the rent by \$20.00 per month from May 2013 to May 2014, a total of 13 months.

He says that Sunday laundry service was provided in the tenancy and that in mid-March 2015 Mr. L. forbade him from using that facility and locked the door to the common laundry room. He says he's had to use laundromats since then.

Mr. L. for the landlord testified that he'd told the tenant from the start that his rent would go up and that the tenant agreed to the increase when Mr. L. handed him the February 1<sup>st</sup> handwritten notice.

Mr. L. says that the tenant was barred from using the laundry facility because he kept adding water manually to the front load washing machine by dumping it from a bucket into the detergent tray. He says he was warned about this conduct but that in March 2015 he was again caught doing it. Thus he was denied further use of it.

Ms. P. testified that the tenant had agreed that after five months his rent would go up.

## Analysis

A landlord's right to impose a rent increase is severely limited by the *Residential Tenancy Act* (the "Act").

Part 3 of the *Act* provides:

### **Part 3 — What Rent Increases Are Allowed**

#### **Meaning of "rent increase"**

- 40** In this Part, "**rent increase**" does not include an increase in rent that is
- (a) for one or more additional occupants, and
  - (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f)
  - (iv) [*requirements for tenancy agreements: additional occupants*].

#### **Rent increases**

- 41** A landlord must not increase rent except in accordance with this Part.

#### **Timing and notice of rent increases**

- 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.

#### **Amount of rent increase**

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
  - (b) ordered by the director on an application under subsection (3), or
  - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4) [Repealed 2006-35-66.]
- (5) 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.

As can be seen, a landlord may not impose a rent increase for at least twelve months after the start of a tenancy and the notice of rent increase must be in the proper form. Any rent increase collected by a landlord who has not complied with Part 3 may be recovered by the tenant.

It is clear that the landlord has not complied with Part 3. The rent increase was not in the proper form and was given only seven months after the start of the tenancy. As an "imposed" rent increase, it was not valid.

I am unable to agree with the landlord that the rent increase was not "imposed" but was agreed to by the tenant.

Had it been discussed and agreed to at the start of the tenancy then it would have been, or should have been, contained in the tenancy agreement . It was not. The landlord cannot argue a verbal agreement that is in direct conflict with the terms of a written agreement.

I cannot agree that the tenant agreed to the increase in February 2014. Rather, the evidence shows that he simply did not oppose it at that time. It was still a rent increase that was imposed on him. Had he not received the February 1s, handwritten notice I consider that he would still be paying the original \$440.00 rent.

I find that the rent increase of \$20.00 effective May 1, 2014 was an illegal rent increase. The tenant is entitled to recover \$260.00 as claimed.

It may be argued that the tenant did not pay the increased rent, the welfare office did. That may be so, but the welfare office paid the landlord the rent on the tenant's behalf and so the tenant is entitled to claim it. The tenant may be obliged to return the overpayment to the welfare office, but that is between the welfare office and him and is not relevant to this claim.

Regarding the laundry facility, I find that there was a clear and valid reason for the landlord to prohibit the tenant from using that service. The evidence of Mr. L. satisfies me that the tenant was persisting in the misuse of the washing machine and that damage would likely result.

Nevertheless, for whatever reason, the service was removed or withdrawn. The fact remains that it was no longer a service the landlord was providing and so the amenity of the rental accommodation for which the tenant was paying full rent, was less. There should have been an adjustment to the tenant's rent for the removal of that service.

As a result, the tenant is entitled to recover damages for loss of the laundry service in the home from March 15 to May 31, 2015. Unfortunately, the tenant's evidence about loss is very slim. He only says that he had to use a laundromat. No indication was given about how often he used that facility or how much it cost.

In result, I award the tenant only nominal damages of \$25.00 for loss of the laundry facility.

### Conclusion

The tenant's application is allowed. He is entitled to a monetary order against the landlord Ms. P. in the amount of \$285.00.

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 04, 2015

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Residential Tenancy Branch

