



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Delaney Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, CNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants disputing an additional rent increase; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, one of whom gave affirmed testimony. An agent for the landlord company also attended and gave affirmed testimony.

The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Should the notice to end the tenancy for unpaid rent or utilities given by the landlord be cancelled?
- Has rent been increased contrary to the *Residential Tenancy Act*?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for Administrative Penalties and credit for the landlord's increased rent?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on January 24, 2015 in this particular unit, and the tenants still reside there. A copy of the tenancy agreement has been provided which states that rent in the amount of \$675.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$337.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing about 30 units.

In July, 2015 the tenants received a Notice of Rent Increase in the mail from the landlord. A copy has been provided and it states, in part, on page 2 of 2 pages:

“1) b) As this is your first rent increase, the date your rent was established: 30 September 2014;

2) Amount of Rent Increase:

- The current rent is: \$600.00 monthly;
- The rent increase is \$15.00 monthly;
- Your new rent will be: \$615.00 monthly;
- Your new rent is payable starting on 01 November 2015”

It is signed by a landlord and dated July 9, 2015. The tenant’s girlfriend signed it and dated it July 13, 2015 on the back of page 2, and the tenant was out of town, but signed it upon his return and dated it July 15, 2015. A copy was not sent to the landlord because that’s not required under contract law and the tenant submits that it’s a legal and binding contract.

The landlord served the tenants with another Notice of Rent Increase and a copy has been provided. That notice is dated October 13, 2015 and is signed by a landlord and states:

“1) b) As this is your first rent increase, the date your rent was established: 30 September 2014;

2) Amount of Rent Increase:

- The current rent is: \$675.00 monthly;
- The rent increase is \$15.00 monthly;
- Your new rent will be: \$690.00 monthly;
- Your new rent is payable starting on 01 February 2016”

The tenant submits that it is the second notice of rent increase in less than 1 year, which is not permitted under the *Residential Tenancy Act*.

The tenant prepared a letter for the landlord and wanted to discuss the additional rent increase, and met with the landlord's agent and gave her the letter personally, but no settlement was achieved. A copy of the letter has also been provided and it is dated October 22, 2015 and explains that landlords can only increase rent once per year in an amount permitted by law. The tenants paid \$675.00 per month to the landlord until the effective date of the first Notice of Rent Increase, when the tenants started to pay \$615.00 per month effective November 1, 2015, and there are no rental arrears.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice) by posting it to the door of the rental unit. A copy has been provided and it is dated November 6, 2015 and contains an effective date of vacancy of November 16, 2015 for unpaid rent in the amount of \$60.00 that was due on November 1, 2015.

The tenants seek to cancel the notice and a declaration that rent is in fact \$615.00 per month as per the binding contract made by the parties in July, 2015. The tenants also seek \$5,000.00 in Administrative Penalties as provided by the *Act*.

**The landlord's agent** (hereafter referred to as the landlord) testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served by posting it to the door of the rental unit on November 6, 2015, and the tenants have not yet paid the outstanding rent.

The tenants, previous to this tenancy, resided in a bachelor suite within the complex and rent was \$600.00 per month. The tenants moved to this rental unit on January 24, 2015 and signed a tenancy agreement for \$675.00 per month with a previous manager; it's a larger unit. The landlord's agent took over in July, 2015.

All of a sudden in November, 2015 the tenants started paying \$615.00 per month. There is a copy of the tenancy agreement on the file with the current landlord for \$675.00 per month but not a copy of a Notice of Rent Increase in July, 2015. When the parties met in October, 2015 the tenant only had page 2 of 2 different Notices of Rent Increase. The landlord has a system for increasing rent for tenants within the complex, and because this tenancy began on January 24, 2015, the earliest a Notice of Rent Increase could be issued by the landlord would have been effective February 1, 2016. The landlord did not issue the Notice of Rent Increase in July, 2015, there is no copy on

file, and landlords don't issue such notices to decrease rent. The tenants may have used a former notice for page 2 because that is the amount of rent that was payable for the unit the tenants resided in prior to this tenancy, and added page 1 for this hearing. The tenant did not have page 1 when the parties met. The landlord does not believe the notice applies to this unit.

The landlord served the tenants with a Notice of Rent Increase dated October 13, 2015 that states as follows:

"1) b) As this is your first rent increase, the date your rent was established: 30 September 2014;

2) Amount of Rent Increase:

- The current rent is: \$675.00 monthly;
- The rent increase is \$15.00 monthly;
- Your new rent will be: \$690.00 monthly;
- Your new rent is payable starting on February 1, 2016"

The tenants have not paid the increase, and the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities based on the amount of rent the tenants failed to make for November, 2015 in the amount of \$60.00. The tenants have not made that payment, and have continued to pay the landlord \$615.00 instead of \$675.00.

The landlord did not orally request an Order of Possession and would be content with the tenants remaining in the rental unit if they pay the rental arrears and pay the increased amount of \$690.00 commencing February 1, 2016.

### Analysis

Firstly, with respect to the tenants' application for Administrative Penalties in the amount of \$5,000.00, the *Residential Tenancy Act* does not permit me to order a fine to a party or penalize any party for any wrong-doing. Further, such penalties are payable to the Crown, not to the tenants. Therefore, the tenants' application cannot succeed.

The parties disagree with respect to whether or not the landlord actually issued a Notice of Rent Increase in July, 2015. I also note that all of the notices state that the tenancy began on September 30, 2014, which clearly is not the case. Whether or not I accept that the landlord did issue July increase, the *Act* also states:

### **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.

Therefore, I find that the landlord did not have the legal right to issue a Notice of Rent Increase in July, 2015 since the tenancy didn't begin until January 24, 2015. I also find that if the landlord wanted to decrease the rent, the landlord would not have used a Notice of Rent Increase, and would more likely have entered into a new tenancy agreement with the tenants, which did not happen.

The tenants claim that a contract is a contract, however, the *Act* also states

**This Act cannot be avoided**

**5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Having found that the landlord had no legal right to issue the Notice of Rent Increase in July, 2015, I also find that it is invalid and of no effect.

The tenants seek to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and having found that the Notice of Rent Increase in July, 2015 is invalid, I also find that the tenants have failed to pay the rent in accordance with the tenancy agreement. Therefore, the tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

The landlord also served the tenants with a Notice of Rent Increase which increases the rent to \$695.00 effective February 1, 2016. Having found that no previous Notice of Rent Increase was effective within the previous 12 months, I cannot conclude that it is an illegal additional rent increase. The tenants' application disputing an additional rent increase is dismissed.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

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: January 06, 2016

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Residential Tenancy Branch

