



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OPTIMA PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      DRI FFT

### **Introduction**

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover the filing fee for this application from the respondent, pursuant to section 72.

ML, legal counsel, represented the respondent in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The respondent confirmed receipt of the application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the respondent duly served with the Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

### **Preliminary Issue: Does this Application Fall Within the Jurisdiction of the Residential Tenancy Act?**

The applicant filed this application under the *Residential Tenancy Act* to dispute a rent increase. The respondent argued that the housing facility is exempted from the *Act* by virtue of section 4(g)(v) of the *Act*, which states that the *Act* does not apply to living accommodation in a housing based health facility that provides hospitality support services and personal health care.

The respondent states that the applicant is responsible for paying a monthly fee, which is currently \$1,935.00 per month, which includes various services such as three meals

daily in the dining room, laundry and linen services, recreational and social programs, daily wellness checks, 24 hour lifeline room monitoring for each resident, and on site salon services for a fee paid by the resident to the service provider. The landlord called a witness in the hearing, NL, who is the site manager. NL testified that all residents are providing housekeeping and meal service, in addition to the aforementioned services as part of the base fee paid by each tenant. Under cross-examination by the applicant, NL confirmed that in the month of April, there were a few social events organized such as a bingo day, ice cream social, an Easter event, as well as paid performers on site. NL testified that due to covid-restrictions, the number of social and recreational events had been reduced.

Counsel argued that no resident at this housing facility has ever filed an application under the *Act* in relation to this housing. Counsel also argued that it was necessary that this type of accommodation be exempted from the *Act* in order to allow flexibility for the residents to move on to other care facilities, and to accommodate the cost of services provided as part of the base fee.

The applicant testified that the facility is an independent living facility, and that most of the regular services provided by the respondent are meals and laundry, which are hospitality services provided to residents who live independently. The applicant argued that the services provided do not qualify the housing as a housing based health facility/.

In consideration of the submissions and evidence before me, I make the following findings. As noted by counsel for the respondent, section 4(g)(v) of the *Act* does not apply to living accommodation in a housing based health facility that provides hospitality support services and personal health care. In this case, although I find that the housing includes hospitality support services such as meals and laundry services, I am not satisfied that this facility qualifies as a “housing based health facility”. Although some health care services appear to be provided to the residents, such as wellness checks and optional monitoring services, I am not satisfied that the main function of the facility is providing health services. Rather, I find the health services references are merely a complement to the services provided to the residents. I find that the housing facility does fall under the definition of supportive housing as defined by Residential Tenancy Policy Guideline #46.

Residential Tenancy Policy Guideline #46 states:

#### **D. SUPPORTIVE HOUSING**

Supportive housing is long-term or permanent living accommodation for individuals who need support services to live independently. The *Residential Tenancy Act* applies to

supportive housing, unlike emergency shelters and transitional housing which are excluded from the Act.

Under section 5 of the Act, landlords and tenants cannot avoid or contract out of the Act or regulations, so any policies put in place by supportive housing providers must be consistent with the Act and regulations.

Based on the definition above, and the fact that the landlord provides living accommodation to individuals who need support to live independently such as meal and laundry services, I find that this tenancy falls under the definition of supportive housing. I find that the agreement signed by both parties clearly state that this an independent living residence with support services provided as part of the agreement. As stated above, supportive housing is not excluded from the *Act*.

Although I acknowledge the potential issues or hardships that the *Act* may pose for a party, these issues or hardships do not excuse a party's obligation under the legislation if the tenancy does qualify as one under the *Act*.

Although the respondent argued that no previous applications have been filed under the *Residential Tenancy Act* in relation to any of the agreements in this residence, and although no previous resident has taken issue with the landlord's position that this type of residence does not fall under the *Residential Tenancy Act*, the landlord may not avoid or contract out of the *Act* by refusing acknowledge the fact, or by including a clause in the agreement.

The *Residential Tenancy Act* provides by section 5 that:

**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.

Section 6 (3) provides:

(3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Based on the evidence and testimony provided to me by the parties, I find that this tenancy falls under the definition of supportive housing, which means the Act applies to this tenancy. Accordingly, I will consider the tenant's application.

### **Issue**

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to recover the filing fee for their application?

### **Background and Evidence**

This month-to-month tenancy began on January 1, 2018, with monthly rent currently set at \$1,935.00, payable on the first of the month. The landlord had collected a security deposit of \$500.00, which the landlord still holds.

Both parties confirmed that the tenant was provided with a letter from the landlord on December 20, 2021 informing the tenant that their monthly rent would increase to \$1,993.00 effective April 1, 2022. Both parties confirmed that this increased amount has not been collected from the tenant. Both parties also confirmed that the tenant has not been served with a Notice to Increase the Rent form..

### **Analysis**

Section 42(3) of the Act states that a notice of a rent increase must be in the approved form. As the tenant has not been served with a notice of rent increase form in the approved form, I find that no determination is required, and the tenant's application is dismissed with leave to reapply.

I allow the tenant to recover the filing fee.

### **Conclusion**

I find that the *Act* applies to this tenancy.

The tenant's application for determination of a rent increase is dismissed with leave to reapply.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount.

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 25, 2022

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Residential Tenancy Branch