

## **DECISION**

**Dispute Codes:** DRI

### **Introduction**

This is the Tenant's application to dispute an additional rent increase.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and this matter proceeded on its merits.

### **Issues to be Decided**

- Is the rent increase effective January 1, 2010, a valid rent increase under the Act, or Regulation?

### **Background and Evidence**

The Landlord wrote a letter to the Tenant on October 27, 2009, advising that his monthly rent contribution would be \$360.00 per month effective January 1, 2010. The Tenant disputes this as an illegal rent increase because it is more than the allowed increase under Section 43 of the Act. Prior to January 1, 2010, the Tenant paid \$355.00 per month. Furthermore, the Tenant stated that the Landlord did not provide him with 3 months notice of the rent increase, as required under Section 42 of the Act. The Tenant testified that he did not get the Landlord's letter dated October 27, 2009. The Tenant has been paying the increase pending resolution of this matter.

The Tenant's Advocate asked for clarification with respect to whether or not the Tenant was subsidized by a corporation or commission exempt from the provisions of Sections 41, 42 and 43 of the Act.

The Landlord's agent stated that the tenancy agreement, a copy of which was entered in evidence, was a little vague because it identified the Tenant's monthly contribution as "rent", rather than "rent contribution". The Landlord's agent submitted market rent for the rental unit is \$845.00 per month and that the Landlord is a private charity that provides subsidy to individuals in need. Each Tenant is assessed individually based on their income and assets. The Landlord's agent referred to clause 12 in the tenancy agreement, and the attached Schedule "A", which speaks to rent subsidy assistance, Tenant's rent contribution, and amount of rent

The Landlord's agent testified that the Landlord has an exemption from the provisions of Sections 41, 42 and 43 of the Act, because of the provisions of Part 1, Section 2(g) of the Residential Tenancy Act Regulation.

## **Analysis**

Sections 41, 42 and 43 of the Act state:

### **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.

Section 2 of Part 1 of the Regulations state:

**Exemptions from the Act**

**2** Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act [*assignment and subletting, rent increases*] if the rent of the units is related to the tenant's income:

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
  - (i) the government of British Columbia;
  - (ii) the British Columbia Housing Management Commission;
  - (iii) the Canada Mortgage and Housing Corporation.

I accept the Landlord's agent's testimony that the market rent for the Tenant's suite is \$845.00, and that the Tenant's rent is subsidized based on his income. I am satisfied that the Landlord is a private charity and is exempt from the provisions of Sections 41, 42 and 43 of the Act.

The Tenant's application is therefore dismissed.

**Conclusion**

The Tenant's application is dismissed.

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: March 22, 2010