



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI

Introduction

This hearing was scheduled to hear the tenant's application to dispute an additional rent increase. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

Issues(s) to be Decided

Has the landlord violated the Act, regulations or tenancy agreement with respect to a rent increase?

Background and Evidence

I heard undisputed testimony as follows. The month-to-month tenancy commenced September 1, 2009. The landlord provides rental accommodation geared to income and currently has an operating agreement with the British Columbia Housing Management Commission (BCHMC). The tenancy agreement provides that the tenant is required to pay rent of \$375.00 on the 1st day of every month until such a time "the rent is increased in compliance with the Residential Tenancy Act."

I also heard that when the tenancy commenced the market rent for the rental unit was \$482.00. On March 12, 2010 the landlord issued a Notice of Rent Increase to the tenant advising the tenant the market rent for the rental unit was increasing to \$497.00 as of September 1, 2010. On June 7, 2010 the landlord issued a letter to the tenant advising the tenant that his rental contribution would be \$387.00 starting July 1, 2010.

The tenant paid \$387.00 for July but has paid only \$375.00 for the months of August and September pending outcome of this hearing.

The tenant is of the position that his rent cannot be increase until September 1, 2010 and requests recovery of the \$12.00 in additional rent paid in July 2010. The tenant's advocate submitted that while this landlord would ordinarily be exempt from the provisions of the Act that pertain to rent increases by virtue of section 2 of the regulations, the tenancy agreement entered into by the parties specifically provides in clause 5 that rent increases must comply with the Residential Tenancy Act. As every word in a contract has a meaning the application of the exemption provided in section 2 of the Residential Tenancy Regulation would render the words "in compliance with the Residential Tenancy Act" meaningless. Accordingly, section 42 of the Act must apply in this situation and the landlord must not impose a rent increase for at least 12 months after the tenancy commenced.

The landlord submitted that the amount of rent payable by the tenant is provided in clauses 5 and 9 of the tenancy agreement. The landlord disagrees with the tenant's advocate's position on the basis that the advocate is reading clause 5 independent of clause 9. The landlord submitted that the market rent for the unit changes effective September 1, 2010; however, it is the tenant's rental contribution that changed effective July 1, 2010 which was changed in accordance with the tenancy agreement and the operating agreement with BCHMC.

Documentation provided for this hearing was a written submission by the advocate, a copy of the landlord's June 7, 2010 letter and the Notice of Rent Increase.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. To be successful, the applicant must show, among other things, that the respondent violated the Act, regulations, or tenancy agreement.

In this case I was not provided with a copy of the tenancy agreement. I also note that the landlord's letter of June 7, 2010 refers to a letter dated June 2, 2010 which I was not provided. However, I accept that clause 5 of the tenancy agreement provides that rent is to be increased in compliance with the Act.

Upon review of the reproduction of clause 5 provided by the tenant's advocate I find that the clause does not refer to a specific section or provision of the Act. I find the inclusion of the words "in compliance with the Residential Tenancy Act" refers to all parts of the Act, including section 97.

Section 97 of the Act provides for the ability to make regulations. Section 97 provides, in part:

Power to make regulations

97 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) exempting tenancy agreements, rental units or residential property from all or part of this Act;

[my emphasis added]

Section 2 of the Residential Tenancy Regulation (the regulations) provides for exemptions from specific sections of the Act. Section 2 provides, in part:

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;

Sections 41, 42 and 43 of the Act provide for rent increases, including the timing and notice of a rent increase, and the amount of the rent increase.

I find that by virtue of section 97 of the Act and section 2 of the Residential Tenancy Regulation that this rental unit is exempt from section 41, 42 and 43 of the Act. I further find that any term in a tenancy agreement that conflicts or is inconsistent with the Act or the regulations is of no effect as provided in section 5 of the Act.

Since sections 41, 42 and 43 of the Act do not apply to this rental unit I find the landlord is at liberty to set the tenant's rental contribution in accordance with the operating agreement in place with BCHMC. If the tenant is of the position the landlord has increased the rent in violation of the operating agreement I suggest the tenant request a copy of the operating agreement and review the application sections of the operating agreement with the landlord. However, as I do not find a violation of the Act, regulations or tenancy agreement on part of the landlord I dismiss the tenant's application.

Conclusion

The tenant's application has been 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: October 20, 2010.

Dispute Resolution Officer