

Decision

Dispute Codes:

MNR, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord seeking an order that the tenant pay a rent increase based on an increase in the tenant's income recently imposed by the landlord.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord had the right to collect additional rent from the tenant based on the tenant's income.

Background and Evidence

The tenancy began in September 2007 and, according to the landlord, the rent was temporarily set at \$450.00 based on financial hardship with the understanding that the rent would be adjusted as a percentage of the tenant's income. Although there was no written contract, this was considered to be a term in the tenancy agreement according to the landlord. The landlord testified that the market rent for the unit was actually \$1,356.00. However, based on the tenant's current income the landlord purported to have only increased the rent from \$450.00 to \$850.00 as of December 1, 2009 and the tenant had refused to pay the new rate. The landlord was seeking \$3,200.00 representing 8 months of short payment by the tenant of \$400.00 per month. The landlord testified that all of the residents in the complex paid rent as a percentage of income calculated in accordance with their ability to pay and stated that it was unfair to the others that this tenant accepted the tenancy on this basis, having asked and received a lower rent that was to continue until her pension was approved.

The tenant's position was that the increase was not allowed under the legislation and also took issue with the amount of the increase and the calculations. The tenant stated that she was willing to pay more than the current rate, but \$850.00 was too much.

Analysis

The Act governs the timing and amount of rent increases allowed. In regard to rent increases, section 41 states that a landlord must not increase rent *except in accordance with Part 3 of the Act* which includes sections 40, 41, 42, and 43.

Section 42 (2) states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. The Notice in evidence, issued by the landlord did comply with this section. In addition, section 42(3) states that a notice of a rent increase must be in the approved form and I find that the landlord's notice had also complied with this section. However, section 43(1), specifies that a landlord may impose a rent increase only up to the amount: 1) calculated in accordance with the regulations or; 2) ordered by the director on an application under subsection (3) or; 3) agreed to by the tenant in writing.

The regulations provide that, for the purposes of section 43 (1) (a) of the Act [*amount of rent increase*], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows: $\text{Percentage Amount} = \text{Inflation Rate} + 2\%$. For 2010 and 2011 rent increases were limited to 3.2% and 2.3 % respectively.

I find that the amount of increase imposed by the landlord in this instance had clearly exceeded the statutory limitation and therefore the Notice of Rent Increase issued by this landlord is not valid. I also find that the tenant did not provide the landlord with prior written consent for a specific increase.

In situations where the tenant has paid the illegal increase, section 45(5) of the Act states that, "*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.*" In fact if the Notice was flawed, the tenant would not be required to pay any portion of the wrongful increase and the Act specifically permits a tenant to deduct the total increase, not merely just the portion charged in excess of the legal limitation.

Section 43(3) of the Act and 23(1) of the Regulation permits any landlord seeking to increase the rent beyond the limited percentage to file an application for dispute resolution requesting an order to impose a rent increase in excess of the percentage normally allowed. I note that the landlord in this situation did not submit an application seeking an order to increase rent in an amount exceeding the usual percentage allowed.

In regards to whether or not this landlord was offering subsidized rental units, Section 2 of the Residential Tenancy Regulations provides that certain organizations are exempt from the provisions in the Act that govern rent increases, provided that the rent is related to the tenant's income. These approved organizations are listed below:

- 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.

In the case before me, I find that this landlord does not meet the above criteria to exempt it from the Act in regards to when, how and how much the rent can be increased and therefore I find that the landlord is bound by the Regulation limiting rent increases to the percentage allowed for the year in which the increase was issued.

Given the above, I find that the landlord was not complying with the Act and Regulation in regards to the rent increase imposed on the tenant and the rent remains at \$450.00 until a valid and compliant Notice to Increase Rent has been issued by the landlord.

Conclusion

Based on the testimony, evidence and pursuant to the Act and Regulation, I hereby dismiss the landlord's application 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: December 2010.

Dispute Resolution Officer