



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant disputing a rent increase.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Do sections 41, 42, and 43 of the Residential Tenancy Act (the "Act"), which relate to rent increases, apply to this Tenant's tenancy agreement with this Landlord?

If so, what amount of rent increase is allowed by the Act; and what Order, if any, should be issued to the Landlord in this regard?

Background and Evidence

The Landlord confirmed that they had received the Dispute Resolution Application, Tenant evidence, and hearing notice from the Tenant shortly after September 30, 2011, the date the Tenant received the Hearing Notice.

The Tenant testified that she did not receive a three month notice of rent increase from the Landlord; that the amount of the rent increase from \$320.00 per month to \$375.00 per month is more than the Act allows; and that the rent increase was not served on her in the proper form. The Tenant stated that she was notified of the rent increase in a letter from the Landlord dated September 08, 2011, stating that her rent subsidy was revised to \$375.00 effective October 01, 2011.

The Tenant testified that she receives \$320.00 plus \$50 for telephone and hydro and phone, for a total of \$370.00, as a shelter portion from the Ministry of Social Development. She states that only \$320.00 is meant for rent. The tenancy agreement indicates that hydro and telephone are not included in the rent. The Tenant states that the rent increase by the Landlord is also more than the BC Housing Rent Calculation Guide allows.

The Landlord testified that they are a non-profit housing society which operates rental units in the building in which the Tenant resides. The Landlord stated that they have an agreement with BC Housing Management Commission ("BC Housing") with regards to the rental units. The Landlord confirmed that the rent of the rental unit is related to the Tenant's income. The Landlord testified that BC Housing Management Commission did an audit and found that the Tenant was not paying the correct amount of rent and that she should be paying \$375.00 in rent rather than \$320.00. The Landlord states that BC Housing advised them to administer the rent increase, and advised them that the Tenant can apply to Ministry of Social Development for the maximum shelter portion amount to align with this requirement. The Landlord served the Tenant on September 8th with the letter indicating the increased rent due to the revision by BC Housing.

The Tenant submitted a copy of the tenancy agreement and the BC Housing rent subsidy form into evidence. The tenancy agreement states that the tenancy commenced on June 01, 2011. The signed tenancy agreement states that it is a residential tenancy agreement with "rent geared to income"; and in item 7: "The landlord has entered into an agreement with BC Housing designating the residential property as housing for low and moderate income tenants". The Tenant signed a BC Housing rent subsidy form which declares the Tenant's income and calculates how much of a rent subsidy from the base rent, of \$650.00 per month, she will be eligible for. The form indicates that BC Housing may audit the income information provided by the Tenant at any time.

For the benefit of both parties, I explained section 2 of the Residential Tenancy Regulation (the "Regulation") at the hearing. Section 2 of the Regulation states:

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.

The Landlord's position is that this Regulation applies to the tenancy agreement they have with this Tenant. The Tenant stated that she was not aware of this Regulation. The Tenant also stated that she may not have entered into a tenancy with this Landlord for this rental unit if she had known that she would be required to pay \$375.00 from her cheque from Ministry of Social Development.

Analysis

The Tenant has applied to dispute a rent increase. Rent increases are covered by the provisions of section 41, 42, and 43 of the Act.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord is a non-profit housing society that has an agreement with the British Columbia Housing Management Commission, operating rental units based on tenant income.

I find that the Tenant's tenancy agreement specifically referred to her rent being tied to tenant income and the BC Housing subsidy agreement.

I find that the rental unit is exempt from the provisions of section 41, 42, and 43 of the Act, as set out in Section 2 of the Regulation.

As a result I dismiss the Tenants' Application.

Conclusion

I dismiss the Tenants' Application.

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 27, 2011.

Residential Tenancy Branch