



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes DRI, OLC

Introduction

This hearing dealt with an application by the tenant to dispute an additional rent increase and for an order for the landlord to comply with the act. Both parties attended the hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began August 1, 2007. The market or economic rent for the tenant's rental unit is \$845.00 and with subsidies provided by the landlord the tenant's payable rent is \$660.00. The landlord requires that all subsidized tenancies annually complete an application for a review of their income to ensure that they continue to qualify for subsidized rent.

The tenant is disputing a notice of rent increase and the tenant's advocate states that as the landlord is not one of the entities as outlined in section 2 (a) through (f) Residential Tenancy Regulations and the landlord does not have an agreement with any of the entities as outlined in section 2 (g) (i), (ii) or (iii) of the Residential Tenancy Regulations specifically for this building and tenancy, the landlord is not exempt from the *Act*.

The landlord testified that they advised the tenant in writing on July 22, 2011 that documentation to establish their income and rent was due to the landlord no later than August 15, 2011 however the tenant did not provide this information to the landlord until August 22, 2011. The landlord stated that as the tenant did not make an application to have his rent subsidized, the tenant will now be required to pay market rent. The landlord stated that only 2 of the 40 tenants in this building did not provide their information to the landlord as required and in order to qualify for the subsidies related to these rental units.

The landlord stated that when the tenant did not provide his income information to them they sent the tenant a letter on October 21, 2011 stating that the rent would be going to the \$845.00 market rate effective January 1, 2012.

The landlord's counsel stated that the landlord has 24 building that they operate as subsidized housing and approximately 15 of these buildings are under agreement with one or more of the entities outlined in section 2 (g) (i), (ii) or (iii) of the Residential Tenancy Regulations. The landlord stated that they have monies provided to them for things such as administrative or parking fees for the 15 buildings under the agreements and that they use these monies to operate their business as a whole which allows them to apply rent subsidizes where needed. The landlord stressed that it is very important that tenants get their completed paper work to the landlord by the deadline specified as the landlord has only so much money with which to subsidize rent and once all of the funds have been allocated there are no additional funds until the following year.

The landlord stated that as the market rent for the tenants unit is \$845.00 and a Safer grant will only cover rent up to \$700.00, the landlord subsidizes the tenant's rent with monies from the directly subsidized rental units it owns and operates. The landlord has been providing this subsidy to the tenant since 2007.

The tenant's advocate argued that the legislation was not specific when stating '*any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following*', and that she believed the intent of the legislation was not to allow landlords to claim they were subsidized housing unless directly under an agreement with either the government of British Columbia, the British Columbia Housing Management Commission or the Canada Mortgage and Housing Corporation.

The landlord's counsel acknowledged that the legislation was not specific in this regard therefore it could also be argued that the landlord was in compliance with the regulations as the landlord has an agreement with one or more of the entities referred to by the tenant's advocate.

The tenant's advocate referred to a 'Hansard' document from the Province of British Columbia legislature and what she believed to be the intent of the Minister Responsible for Housing when he spoke about subsidized and non-profit housing; this document has not been submitted into evidence. The tenant's advocate also question why the landlord had not submitted into evidence; copies of the agreements that the landlord has with the government of British Columbia, the British Columbia Housing Management Commission or the Canada Mortgage and Housing Corporation in relation to the 15 buildings currently under agreement.

Analysis

Based on the documentary evidence and testimony of the parties I find that the tenant has not met the burden of proving that the rent increase which is to take effect January 1, 2012 should be set aside or that the landlord must comply with the *Act*.

Page 1 of the tenancy agreement outlines that the landlord operates subsidized or low income housing units and that the tenant's rent contribution is based on the '*Tenant's income among other factors*'. This agreement notes the *Initial Economic Rent* as \$845.00 with the tenant's contribution assessed individually and based on their income and assets.

The landlord has established that they are a private charity that provides subsidy to individuals in need and the tenancy agreement notes that the landlord has '*agreements with levels of government and agencies such as Canada Mortgage and Housing Corporation, BC Housing Management Commission and others providing for a contribution towards the rent.*' The landlord stated that to be more effective in the delivery of rent subsidies they use subsidy monies from their other buildings to provide rent subsidies to tenants in buildings that would otherwise not benefit from the landlord's rent subsidy program.

And while section 2 (g) of the Regulations could be argued both for and against in how this relates to the agreements the landlord has with the government of British Columbia, the British Columbia Housing Management Commission or the Canada Mortgage and Housing Corporation, and how those agreements relate to this specific building and tenancy, it must be acknowledged that the landlord has in fact been providing the tenant a rent subsidy since he took occupancy of the rental unit in 2007.

I therefore find that the landlord meets the definition of section 2 (g) of the Residential Tenancy Regulation and is therefore exempt from the provisions of Sections 34 (2), 41, 42 and 43 of the Residential Tenancy Act.

Section 2 of Part 1 of the Regulations state:

Exemptions from the Act

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 tenant's application is hereby dismissed and jurisdiction declined as this matter does not fall under the *Act*.

Conclusion

The landlord is a private charity that receives funding from one or all of the organizations outlined in section 2(g) of the Residential Tenancy Regulations and is therefore exempt from the provisions of Sections 41, 42 and 43 of the Act.

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 13, 2011.

Residential Tenancy Branch