



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

Has the landlord served the tenant with a rent increase that is in keeping with Legislation? Is the landlord exempt from the provisions of Sections 41, 42 and 43 of the *Act*?

Background and Evidence

This tenancy began in March 2001. 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 \$325.00. 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 landlord testified that documentation to establish the tenant's income and rent was due to the landlord no later than August 15, 2011. The tenant stated that he dropped off his documents into the designated slot box on August 15, 2011. The landlord stated that the tenant's documents were received by fax on October 20, 2011 which was well past the deadline of August 15. The landlord also testified that the mail box was secure, access to its contents was only available to the landlord and that several tenants had used this box to submit their documentation, without problem. The landlord added that of the 40 residents of this building only two applications were not received by August 15, this tenant being one of the two.

The landlord stated that as the tenant did not make an application to have his rent subsidized, in a timely manner, the tenant will now be required to pay market rent.

The landlord stated that upon receipt of the tenant's income information by fax on October 20, 2011, the landlord sent the tenant a letter stating that the application process for subsidies was closed and that rent would be going to the \$845.00 market rate effective January 1, 2012.

The tenant is disputing the 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) of the *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 tenant's counsel also pointed out that the first page of the tenancy agreement identified the tenant's monthly payment as "rent" rather than "rent contribution". This issue was dealt with in a hearing on March 12, 2010 and it was determined that the amount indicated on page one of the tenancy agreement is indeed the tenant's contribution towards rent, after he receives the subsidy.

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 subsidies 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.

Analysis

Schedule A 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 tenant's contribution is assessed individually and based on the tenant's income and assets.

The landlord has established that they are a private charity that provides subsidy to individuals in need and 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.

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.

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 2001.

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.

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. 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 22, 2011.

Residential Tenancy Branch