



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel an additional rent increase and for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and his Advocate and landlord and their Council attended the conference call hearing. The tenant and landlord gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to dispute an additional rent increase?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement?

Background and Evidence

The parties agree that this tenancy started on April 01, 2009. At present the tenant pays a subsidized rent for this unit of \$365.00 per month however the tenancy agreement in place between the parties shows the economic rent for this unit is \$845.00. Rent is due

on the first day of each month in advance. The tenant paid a security deposit of \$300.00 at the start of the tenancy.

The tenant agrees that the landlord requires the tenant to complete an application each year for review of his income to determine if a tenant qualifies for the subsidized rent for the following year which in this case should have been completed by August, 15, 2011 for 2012. The tenant testifies that he did provide all the required documentation to obtain his rent subsidy for 2012 before the required date despite not having been given an application form by the landlord. The tenant states this documentation was given to the manager of the building to pass on to the landlord. The tenant states as he did not receive an application form from the landlord he simply gathered the same documentation that was required the previous year and handed this to the building manager who assured the tenant he would pass it on to the landlord.

The tenant testifies he received a letter from the landlord on October 21, 2011 that informed the tenant that he did not qualify for a rent subsidy for 2012. The tenant states he took the letter to the landlord's office and was told he could not have an appointment that day but the person there gave the tenant a number to call to discuss his concerns. The tenant states he called this number and found it was the number for BC Housing. The tenant states he told them his concerns and they informed the tenant that he was not on their list for subsidized housing.

Council for the landlord states that this building does not have an agreement with a Government body but did have an operating agreement with the Canadian Mortgage Corporation to provide low cost subsidized housing for low income individuals. When the mortgage was paid off in 2001 the agreement expired but the landlords continue to offer low income housing as a charitable organisation and continue to have agreements in place with the City of Vancouver and Canada Revenue. Council for the landlord states the landlord is recognised as an approved provider of low income housing and it is this agreement as a landlord that allows them to be exempt from the Act. This is not a year by year agreement but an exemption for them as a non profit society that provides low cost housing.

Council for the landlord states the tenants rent is not actually being increased it is just reverting back to the economic rent for his unit as stated on his tenancy agreement. Council for the landlord states this tenant did not submit an application within the designated time frame; therefore the tenant no longer qualified for the rent subsidy for 2012. The landlord states they did not receive the documentation from the tenant to support his income by the August 15, 2011 deadline and states the tenant would not have been referred to BC Housing if he had asked for an appointment with the landlord as BC Housing would not have a record of this tenant on their subsidized tenants list.

The tenants advocate argues that the landlord does not have an exemption under s. 2 of the Residential Tenancy Regulations for this building. The landlord must therefore apply s. 43 of the Act in regards to rent increases as according to the regulations it clearly shows that the landlord is not exempt from the Act.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The parties have provided a copy of the tenancy agreement which notes that the landlord operates subsidized and low income housing and details that the tenant's contribution is based on the tenant's income, among other factors. It also goes on to note that the provisions in the Residential Tenancy Act relating to changes to the rent do not apply to this tenancy agreement or the landlord. The tenancy agreement notes that the economic rent for this unit is \$845.00.

The landlord has established that they are a charity which has been subsidizing the rent for tenants living in this building since their mortgage ended with the Canadian Mortgage Corporation. The landlord has also established that as a landlord they have agreements with British Columbia Housing to offer subsidized rent for some of their other buildings. The landlord agrees that this building does not have a separate agreement with BC Housing or the Canadian Mortgage Corporation since their Mortgage expired in 2001 however it must be acknowledged in this decision that the

landlord has continued to provide this tenant with a rent subsidy since the start of his tenancy in 2009.

It is therefore my decision that the landlord does offer subsidized housing and meets the definition of s. 2(g) of the Residential Tenancy Regulation. The landlord is therefore exempt from the provisions of s. 34(2), 41, 42 and 43 of the Residential Tenancy Act.:

Section 2, part 1 of the Regulations states as follows:

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.

Consequently, it is my decision that the Residential Tenancy Branch has no jurisdiction over the amount of rent paid at this rental unit. If the tenant wishes to dispute the rent amount or the landlord's decision not to offer the tenant subsidized rent for 2012 the tenant must look to some other form of jurisdiction in this matter.

With regards to the tenant's application for the landlord to comply with the Act, as the landlord is exempt from the Act regarding rent increases, this section of the tenant's application is dismissed.

The tenant's application is therefore dismissed without leave to reapply.

Conclusion

I decline jurisdiction in the matter of the tenant's application to dispute an additional rent increase, as the landlord is a charity that receives funding from at least one of the organizations detailed in s. 2(g) of the Residential Tenancy Regulations and is therefore exempt from the provisions of s. 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