



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, OLC, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to dispute an additional rent increase; for an order to have the landlord comply with the Residential Tenancy Act (Act); regulation or tenancy agreement; and to rescind the tenant's Notice to End Tenancy.

The hearing was conducted via teleconference and was attended by the tenant's advocate, the tenant, and the landlord's agent. At the start of the hearing the tenant's advocate stated the tenant was in attendance but had left the room for a short period. The hearing started with the advocate's permission but neither advocate nor the tenant notified me that the tenant had returned at any point through the duration of the hearing.

At the outset of the hearing I informed both parties that on the matter of the tenant's notice to end tenancy, the only way for a tenant to rescind her Notice to End tenancy was to get an agreement from the landlord and that I had no jurisdiction to intervene.

The landlord did state that they would discuss with the tenant the possibility of cancelling her notice pending the results of this hearing. The tenant's advocate confirmed he understood, as a result I amend the tenant's Application to exclude the matter of rescinding her Notice to End Tenancy.

While the landlord had submitted into evidence a copy of a previous decision on this issue relating to another tenancy, I advised both parties I had reviewed other decisions that have been made within the last 2 months on this issue. However, as the tenant and her advocate did not have access to these decisions, prior to the hearing, I have not considered them in this decision.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to disregard a rent increase, pursuant to Sections 40, 41, 42, 43 of the *Residential Tenancy Act (Act)*.

## Background and Evidence

The landlord has submitted a copy of a tenancy agreement signed by both parties on October 18, 2010 for a month to month tenancy beginning on November 1, 2010 with an "initial economic" rent of \$845.00 due on the 1<sup>st</sup> day of each month with a security deposit of \$300.00.

In relation to the services and amenities included the rent, the agreement states that the checked items below are included in the tenant's rent. The items checked include heat, hot water, stove/fridge, and cablevision (surcharge).

The tenancy agreement includes the terms below (reproduced in part):

"The monthly rent for the Tenant's Suite will be based upon the current economic rent for the Suite from time to time, which is currently the amount shown above per month, plus any applicable surcharges for additional services. The economic rent, and the contribution which the Tenant is required to pay towards that economic rent, is subject to change by the Landlord from time to time as set out in this section.

The Landlord operates subsidized or low-income housing units. The contribution which the Tenant will pay each month towards the rent for the Suite is related to the Tenant's income, among other factors.....The Landlord will be entitled to alter the monthly economic rent for the Tenant's Suite as these factors change over time, and the Landlord has the right to change the Tenant's contribution to the rent from time to time in order for the Landlord to manage or address these factors as the Landlord sees fit. The provisions in the Residential Tenancy Act (the "Act") relating to changes to the rent do not apply to this tenancy agreement or to the Landlord.

Without limiting the Landlord's rights, the Tenant acknowledges and agrees that if the total gross income and/or total assets of all occupants in the Suite exceed any maximum threshold which is set by the Landlord or any governmental agency with which the Landlord deals, or if the Tenant no longer qualifies for subsidized housing for any reason, then the Landlord may immediately increase the Tenant's monthly rent contribution to 100% of the full economic rent for the Suite or may terminate the tenancy, in the Landlord's discretion."

The landlord provided a copy of a letter dated October 18, 2010 from the landlord to the tenant advising her that her rent is \$845.00 per month and that the landlord will provide a subsidy and the tenant's rental contribution is \$403.00 per month. The letter also notes that the rent includes heat, hot water and cable.

Both parties provided a copy of a letter dated October 20, 2011 from the landlord to the tenant stating that: "Your current subsidy ends December 2011 and you did not submit an Application for 2012. The Application deadline was August 15, 2011 and the process is now closed. Therefore, effective January 1, 2012 your rent contribution as per your lease will be \$845.00 + \$23.00 cable." The letter also includes a notation "that this building is NOT government subsidized."

The tenant asserts this letter is a notification of rent increase that is not compliant with the *Act*. The tenant submits that the landlord is not exempted from the sections of the *Act* that prescribe how, when and by how much a rent increase may be implemented because the subsidy provided to the tenant was from the landlord directly and not from BC Housing.

The landlord has provided into evidence a copy of the 1<sup>st</sup> page of an agreement dated August 1, 1993 between the landlord and the BC Housing Management Commission indicating the landlord operates to non-profit housing projects, both at different addresses than this rental unit.

In the hearing the landlord's agent testified that this agreement had expired but that she did have an agreement specific to this building, however it was not submitted into evidence. The landlord further testified that the agreement covers only certain rental units in the building and that the unit this tenant is in is subsidized from the landlord and not from BC Housing.

The landlord's agent's position is that the regulation allowing the exemption is sufficiently vague as to not require anything more than the landlord having an agreement with the provincial government; the BC Housing Management Commission; or the Canada Mortgage and Housing Corporation. She asserts there is no requirement for the agreement to be specific to this particular rental unit.

### Analysis

Section 2 of the Residential Tenancy Regulation states rental units operated by the following are exempt from the requirements of Sections 41, 42 and 43 of the *Act* [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.

From the evidence provided, I find the landlord has failed to establish that there is a current agreement between the landlord and any agency listed in Section 2 of the regulation. As such I find the landlord is not exempted from Sections 41, 42, or 43 of the *Act*.

Rent is defined in Section 1 of the *Act* as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.

From the tenancy agreement submitted into evidence I find that the value of rent agreed to by both parties prior to the start of the tenancy is \$845.00 per month, known as the economic rent. I also find the agreement provides terms, agreed upon by both parties that would provide the tenant with a subsidy to be put toward the payment of the rent on a monthly basis and that that subsidy is based on the tenants income and assets.

I find that the letter dated October 20, 2011 is a notification to the tenant of the end of her entitlement to the subsidy previously granted to the tenant. I am not persuaded by the tenant's position that this constitutes a rent increase, as the value of the rent agreed to by the tenant and the landlord was \$845.00.

However, as the tenancy agreement and the letter dated October 18, 2010 indicate that cable is included in the rent with no indication of any amount charged for this service in either document, I find that the landlord is attempting to charge \$23.00 for service provided for in the tenancy agreement. I further find that this amount would constitute a rent increase.

If the landlord wishes to increase the amount of rent for this tenancy, based on the current rent of \$845.00, the rent increase allowable in 2012 is up to 4.3% or \$36.33, pursuant to Section 41. Section 42 of the *Act* prescribes how a landlord may implement a rent increase only upon providing the tenant with written notice of the increase at least 3 months in advance of the effective date and that it must be in the approved form.

Conclusion

For the reasons noted above, I find there is nothing in the *Act* that prohibits any landlord from ending a subsidy provided to any tenant under any tenancy agreement. As such, in the case before me, I find the landlord is not imposing a rent increase by returning the tenant's contribution to 100% of the rent noted in the tenancy agreement, in the amount of \$845.00.

However, for the amount of \$23.00 that the landlord wishes to increase the tenant's rent for cable, I find that as the landlord is not exempted, in this case, from the provisions of Sections 41, 42, and 43 of the *Act*, the landlord cannot impose the rent increase of \$23.00 based on the letter dated October 20, 2011.

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: January 10, 2012.

---

Residential Tenancy Branch