

DECISION

Dispute Codes DRI, MNDC

Introduction

This is an application filed by the Tenants for a monetary order request for compensation for damage or loss under the Act, regulation or tenancy agreement, an order regarding a disputed additional rent increase and a determination of what the correct rent rate should be.

Both parties attended the hearing by conference call and gave testimony. Both parties have acknowledged receiving the evidence submitted by the other party. On this basis, I am satisfied that both parties have been properly served with the notice of hearing and evidence packages submitted according to the Act.

Both parties have submitted written evidence packages, these with the direct testimony have been considered.

Two preliminary decisions were made prior to the end of the hearing. One on January 4, 2012 and the second on January 16, 2012 and form a part of the record for this file. Those decisions shall be copied and delivered to both parties.

Issue(s) to be Decided

Is the Landlord's notice of a rent increase of 7.4% exempt from the provisions of sections 41 to 43 of the Residential Tenancy Act by way of section 2 of the Residential Tenancy Regulations?

Are the Tenants entitled to a monetary claim of \$974.55 to recover the difference in the rent increase amount collected by the Landlord?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence and Analysis

The Landlord asserts that Section 2 of the Residential Tenancy Regulations apply in this Tenancy Agreement. The onus is on the Landlord to demonstrate that section 2 exempts them from the rent increase provisions of the Residential Tenancy Act. Section 2 of the Regulations 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.

[am. B.C. Reg. 249/2008.]

Firstly the Landlord asserts that the exemption in section 2 (e) of the regulations applies to “rental units” (plural) operated by “Metro Vancouver Housing Corporation”. Secondly, the exemption in section 2 (g) applies generally to “residential property” operated by a non-profit municipal housing corporations who have agreements with BC Housing. The Landlord has submitted written submissions that “MVHC would determine the total rent necessary to fund the operation of the building, such as maintenance expenses, upkeep and capital reserves, which would determine the individual rent necessary to break-even.” The Landlord has not provided any evidence that would establish that the rent was based upon the Tenant’s income. Both parties have provided evidence that the Landlord has not collected any type of income information from the Tenants since 1998. I find based upon this information that the rent was determined by the operating expenses of the rental property and not based upon the Tenant’s income. The Landlord has failed to establish a claim that section 2 of the regulations exempts them from the Act in this instance.

The Tenant seeks a monetary order for the recovery of rent monies paid in excess of the allowed rate under the Act. Both parties have submitted that on September 1, 2010 the monthly rent for the Tenant's unit was \$778.00 that was increased by 7.4% to \$835.00. As well a second increase took effect on October 1, 2011 increasing the rent to \$854.00. As a finding has been made that the Landlord is not exempt in these circumstances to the rent increase provisions of the Residential Tenancy Act, I find that the Landlord has collected a total illegal rent increase amount of \$912.00 from September 1, 2010 to December 31, 2011. The Tenant is entitled to the return of \$57.00 ($\$835.00 - \$778.00 = \57.00) per month for 12 months totalling, \$684.00 for the period between September 1, 2010 and September 31, 2011. The Tenant is also entitled to the return of \$76.00 ($\$854.00 - \$778.00 = \76.00) per month for 3 months totalling, \$228.00. I order that the September 2010 and October 2011 rent increases be set aside and the current rent to be set at the Pre-September 2010 rent rate of \$778.00. The Tenant is also entitled to recovery of the \$50.00 filing fee. I find that the Tenant is entitled to a monetary order under section 67 for \$962.00.

Conclusion

The Landlord is not exempt from the Residential Tenancy Act provision of rent increases.

The Tenant is granted a monetary order for \$962.00.

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: April 4, 2012.

Residential Tenancy Branch