



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER KIWANIS SENIOR HOUSING SOCIETY and ATIRA
PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 14, 2013, by the Tenant; to dispute an additional rent increase and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The Tenant acknowledged the Landlord's evidence however it was labeled with the Landlord's file number for a future hearing. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is this tenancy exempt from sections 41, 42 and 43 of the *Residential Tenancy Act*?
2. If not, is the additional rent increase in compliance with the *Residential Tenancy Act*?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: the Notice of rent increase; written communications between the Tenant and Landlords regarding the pending rent increase; and Canada Post receipts.

The Landlord submitted documentary evidence which included, among other things, copies of: Letters issued to tenants; financial statements; estimates for proposed work to the building; and advertisements listing neighboring units for rent.

The Tenant testified that her month to month tenancy began in December 2008. Rent is currently payable on the first of each month in the amount of \$439.00 and at the beginning of the tenancy she paid approximately \$195.00 as the security deposit.

The Tenant stated that although her income was reviewed prior to being accepted as a tenant, her rent is not subsidized annually. She does not have to submit financial information each year to determine her monthly rent. She is disputing the Notice of rent increase dated February 25, 2013, because it is for a 10% increase and not 3.8% which is the legislated amount.

The Landlord testified that they initially thought the rents for this building were exempt from sections 41, 42, and 43, (rent increases) of the Act because it is housing that was established for low income seniors. They have since verified with the *Residential Tenancy Branch* that this tenancy agreement is not for subsidized housing and is not exempt from any sections of the Act. Since then they have filed an application for an additional rent increase and have had other applications joined to their hearing.

Analysis

I have carefully considered the foregoing and on a balance of probabilities I find as follows:

Neither party disputes that the Landlord provides housing for low income seniors and that this tenancy does not involve subsidize rent. Therefore, I find this tenancy is not exempt from sections 41, 42, and 43, of the *Residential Tenancy Act*.

The legislated amount for annual rent increases in 2013 is 3.8%. Therefore, I find the Notice of rent increase issued February 25, 2013, for a 10% increase to be invalid, as it is higher than the allowable amount. Accordingly, I uphold the Tenant's request to cancel the Notice of rent increase.

The Tenant has succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Notice of Rent Increase issued February 25, 2013, is HEREBY CANCELLED and is of no force or effect.

The Tenant may deduct **\$50.00** from her next rent payment as full recovery of the filing fee.

This decision is legally binding and 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: June 11, 2013

Residential Tenancy Branch

