



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNR, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order regarding a disputed additional rent increase pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to discuss the issues in dispute, and to cross-examine one another. The tenant testified that he was handed the landlord's 10 Day Notice by one of the landlord's representatives on November 4, 2013, at approximately 4:00 p.m. The tenant testified that he handed his original application for dispute resolution and much of his evidence package to one of the landlord's representatives on October 28, 2013. He testified that he handed a copy of his amended application for dispute resolution, adding an application to cancel the 10 Day Notice to his earlier application, to a landlord representative on November 5, 2013. The female landlord (the landlord) confirmed receipt of these documents from the tenant on the above dates. Both parties confirmed that they received written evidence packages from one another in their entirety well in advance of this hearing. I am satisfied that the above documents were served to one another in accordance with the *Act*.

The landlord requested the issuance of an Order of Possession on the basis of the 10 Day Notice in the event that the tenant's application were dismissed.

Near the commencement of the hearing, I asked for clarification of the tenant's application to dispute an additional rent increase. Based on the written evidence and the sworn testimony of the parties, I find that the landlord has not issued a rent increase in excess of the annual amount allowed under section 43(1) of the *Act* and the

Regulations. Rather, this issue involves the landlord's calculation of the tenant's income which leads to his payment of 30% of his gross income to the landlord for this rent geared to income rental unit in a subsidized housing building. As the landlord is not attempting to seek a rent increase beyond the annual amount allowed in the *Regulations*, I advised the parties that I would be dismissing the tenant's application to issue an order with respect to an additional rent increase, as no such increase has been issued by the landlord.

During the early stages of this hearing, the parties provided basic evidence to clarify the issues before me and the status of the issues under dispute. After describing the hearing process and how each party would have an opportunity to both provide their evidence and ask questions of the other party, I also noted that the *Act* (section 63) allows an Arbitrator to assist the parties to settle their dispute. The parties indicated that they were willing to discuss the issues in dispute with one another, without my participation, to determine if they could reach a settlement. Had they been able to reach a satisfactory agreement, the terms of their settlement would have been recorded as part of this decision.

The parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and at one stage of the hearing came close to reaching a settlement. However, as I was attempting to clarify the terms of their settlement agreement, the tenant advised that he needed an admission of wrongdoing from the landlord in order to enable him to agree to the terms discussed. While attempting to resolve these issues, the tenant became increasingly agitated and upset. Shortly thereafter, the tenant disconnected from the teleconference hearing, approximately 42 minutes after this hearing commenced. After waiting five minutes to see if the tenant would reconnect with the hearing, it became apparent that the tenant had decided to withdraw from participation in this hearing. After this five minute delay, I continued with the remainder of the hearing and a consideration of the tenant's application and the landlord's oral request for an Order of Possession. The hearing was completed 14 minutes after the tenant disconnected from the hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for damages and losses arising out of this tenancy? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy in a multi-unit subsidized housing building commenced on September 1, 2008. According to the terms of Rent Geared to Income Residential Tenancy

Agreement (the Agreement) between the tenant and the public housing landlord and entered into written evidence by the landlord, the tenant was to pay 30% of his gross income calculated annually to the landlord as rent. Section 9(a) of the signed Agreement stated that "Any change in the rent will be determined in accordance with Section 9(b) and is not subject to the RTA" (the *Residential Tenancy Act*). Although the tenancy started on September 1, the tenant gave undisputed sworn testimony that the anniversary date for the calculation of the annual amount of rent he was to pay based on his gross income was August 1st of each year.

The landlord gave sworn oral testimony supported by written evidence that this year's monthly rent calculation was initially set at \$378.00. However, the landlord lowered this amount to \$343.00 on September 25, 2013, to reflect income information provided by the tenant after the initial calculation for the current year's monthly rent had been conducted. The amount identified in the landlord's 10 Day Notice was \$343.00 for rent owing as of November 1, 2013.

The tenant maintained that the landlord had erred a number of times in the way it had calculated his annual gross income, much of which is earned over a shortened portion of the year. The tenant's written evidence maintained that the landlord was incorrect in its original calculation of the \$378.00 in monthly rent he should be paying, and continues to be in error in its determination that his correct monthly rent is \$343.00. The tenant provided a different method of calculating his monthly rent, which he variously set at \$285.00 or \$283.00. In his September 30, 2013 letter to the landlord and after explaining how he had calculated his rent, he advised the landlord that he would only be paying \$283.00 in rent. In this letter, he also outlined the process he had arrived at whereby he determined that he had been overcharged by the landlord a total of \$190.00, which he deducted from the \$283.00 in rent which he believed was his correct monthly rent. According to this letter, he paid the difference between these two figures, \$93.00 ($\$283.00 - \$190.00 = \93.00), which he considered owing for October 2013.

The tenant's application for a monetary award of \$379.00, arose out of his claim that possessions that he had left in his locker were removed by the landlord likely when other unused or abandoned lockers were cleared out in this building. He provided a list of belongings that he maintained were discarded by the landlord, including his lock which was intended to prevent anyone from taking his goods. At the hearing, the tenant confirmed that the only receipt that he had produced and submitted as written evidence of the worth of the items lost in his locker was a \$142.81 receipt of May 22, 2013 from a department store.

While the landlord was unwilling to accept liability for the tenant's losses arising out of the goods that went missing from the tenant's locker, the landlord agreed to a good will credit of \$153.00 to the tenant. On October 15, 2013, the landlord's male representative at this hearing sent the tenant written confirmation of its intention to provide this credit, intended to reimburse the tenant for his suitcase and lock. At the hearing, the landlord testified that this credit has not yet been provided to the tenant, as the landlord was awaiting the outcome of this hearing.

At the hearing, the tenant testified that he was current in his rent, on the basis of his calculations. The landlord testified that the tenant has not paid the \$343.00 rent that the landlord maintained became due on November 1, 2013. The tenant confirmed that he had made no additional payment to the landlord after receiving the 10 Day Notice, as he maintained that the landlord owed him money from this tenancy.

Analysis – Tenant's Application to Cancel the 10 Day Notice to End Tenancy

I first note that section 9(a) of the Agreement signed by the tenant specifically stated that any change in the monthly rent was to be determined in accordance with Section 9(b) of the Agreement and were not subject to the Act.

Section 5 of the Act prevents parties from contracting out of the provisions of the Act and notes that any attempt to contract out of the Act is of no effect. I find that section 9(a) of the Agreement does not contravene section 5 of the Act. This tenancy was established as a subsidized rental unit operated by a public housing body, defined under section 49.1(1) of the Act in the following terms:

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit...

It is clear from the Agreement that the tenant agreed that his monthly rent was to be determined on the basis of his submission of income information to the landlord. He specifically agreed that changes to his monthly rent would be linked to his provision of income statements and would not be subject to the Act. I also find that sections 9(a)

and (b) of the Agreement are in alignment with the provisions of section 49.1(1) of the *Act* and do not contravene section 5 of the *Act*. As such, I find that the *Act* does not apply to the actual calculations arrived at by the landlord to identify the correct monthly rent for this tenancy.

Much of the tenant's documentation involves his own interpretation of the figures selected by the landlord to identify his monthly rent. As the landlord did reduce the amount of his monthly rent from \$378.00 to \$343.00, I find merit to the tenant's claim that he overpaid the difference between these figures, \$35.00, for the months of August and September 2013. However, as outlined above from the tenant's September 30, 2013 letter, he paid only \$93.00 to the landlord towards his October 2013 rent. The landlord gave undisputed sworn testimony that no additional rent payments have been made by the tenant to the landlord for November 2013.

I have based my decision on the written evidence before me and the sworn oral testimony of the parties. In this regard, I note that the tenant disconnected from the teleconference hearing in anger after he stated that he was willing to vacate the rental unit within two days if necessary or by the end of December 2013. He disconnected from the hearing before he had the opportunity to provide sworn oral testimony regarding a number of the issues covered in his written evidence.

I find that the monthly rent as requested by the landlord in the amount of \$343.00 is the correct monthly rent due in accordance with the terms of the Agreement for November 2013, the date cited in the 10 Day Notice for the outstanding rent. A tenant under these circumstances and after signing a Rent Geared to Income Agreement containing a clause as set out in Sections 9(a) and (b) has no legal authority to arbitrarily decide the correct amount of his monthly rent and withhold the remainder of the rent identified as owing by the public housing body for a subsidized rental unit.

Based on a balance of probabilities, I find that the tenant has not paid the rent identified as owing in the landlord's 10 Day Notice in full within 5 days of receiving that Notice. Although I accept that there are some limited credits that can be applied towards the amounts owing, including \$35.00 from each of August and September 2013, and \$93.00 towards his October 2013 rent payment, I find that rent remained owing for October 2013 and rent is certainly owing for November 2013. For these reasons, I dismiss the tenant's application to set aside the landlord's 10 Day Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application to set aside the 10 Day Notice, I allow the landlord's request for an Order of Possession. The landlord could have requested a 2-day Order of Possession, as the November 15, 2013 effective date of the 10 Day Notice has expired. However, as a public housing body, the landlord requested an Order of Possession to take effect on December 31, 2013, the date discussed between the parties at this hearing. I grant the landlord the Order of Possession to take effect on that date.

Analysis – Tenant's Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

There is disputed evidence with respect to whether the landlord was responsible for the items that the tenant maintained went missing from his storage locker. The tenant maintained that his belongings went missing as a result of actions taken by the landlord's staff, perhaps as a result of errors arising out of the work that was done with respect to the abandoned lockers. The landlord admitted no wrongdoing with respect to the tenant's locker. However, as a gesture of good will, the landlord was willing to reimburse the tenant \$153.00, to compensate him for his proven losses in this regard.

In this case and as discussed at the hearing, the only evidence of actual losses incurred by the tenant was the tenant's provision of the May 22, 2013 receipt for a suitcase that has subsequently gone missing. Without more details other than the tenant's description of the missing items, and more importantly, without any receipts with respect

to the items claimed, I find that the tenant has only demonstrated actual proven losses in the amount of \$142.81. Given that the landlord has also expressed a willingness to reimburse the tenant for a lock, I find the landlord's offer of reimbursement of \$153.00 is a fair and reasonable way of compensating the tenant for his losses. For these reasons, I issue a monetary award in the tenant's favour in the amount of \$153.00. I

Section 72(2)(a) of the *Act* reads in part as follows:

72 (2) *If the director orders a party to a dispute resolution proceeding to pay any amount to the other,...the amount may be deducted*

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, ...

Since I find that rent is owing from this tenancy, I order the landlord to deduct the amount of the \$153.00 monetary award issued to the unpaid rent owing from this tenancy.

Conclusion

I dismiss the tenant's application to set aside the 10 Day Notice without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on December 31, 2013. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the tenant's favour in the amount of \$153.00. In accordance with section 72 of the *Act*, I order the landlord to implement this monetary award by reducing the amount of outstanding rent owing from this tenancy by \$153.00. I dismiss the tenant's application for an order regarding an additional rent increase without leave to reapply as I find that no such additional rent increase has occurred.

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 02, 2013

Residential Tenancy Branch

