



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Atira Property Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, MNDC, OLC, FF, O

### Introduction

This hearing dealt with applications pursuant to the *Residential Tenancy Act* (the *Act*) from five senior citizen tenants in a 90-unit seniors rental tower operated by a housing society which has an agreement to operate this rental property with the B.C. Housing Management Commission (BC Housing). These tenants appointed Tenant WFT (the tenant) to act as their agent in the pursuit of their application for the following:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- other remedies, which the tenant described in an addendum to their Details of the Dispute as their request for a monetary award for losses arising out of their tenancies and an order requiring the landlord to comply with the *Act*.

At the hearing, the five tenants were represented by the tenant, appointed by them to act on their behalf in what appeared to be their similar joined applications for dispute resolution. The landlord's representatives also attended this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the commencement of the hearing, Landlord Representative CI (the landlord) maintained that rent increases in this rental building do not fall within the jurisdiction of the *Act* because they are operated by a housing society pursuant to an operating agreement with BC Housing.

### Issues(s) to be Decided

Do these applications fall within my jurisdiction under the legislation?

### Background and Evidence

The landlord's representatives gave undisputed sworn testimony and written evidence that until this year, the landlord sent requests to tenants in this building to remind them that if they wished to obtain a rental subsidy from BC Housing to reduce their rent they need to submit income information to the landlord. This information then formed the basis of the tenant's monthly rent for the rental period from May 1 until April 31 each year for those who qualified for the rent subsidies.

In mid- February 2014, all tenants in this building were sent requests to provide the landlord with information regarding their annual income.

Until May 1, 2014, the tenants were paying an unsubsidized monthly rent of \$610.00. On April 28, 2014, the landlord sent those tenants who had not provided their income information a letter notifying them that as they had not provided their income information their rent would be increasing to \$850.00 as of May 1, 2014. The tenants maintained that this increase is far beyond the allowable rent increases that are permitted under the *Act* and the *Residential Tenancy Regulation* (the Regulation) established pursuant to the *Act*. They applied for a reduction of their rent to the allowable level permitted under the *Act* and a recovery of any rental amounts they had paid in excess of that permitted under the legislation.

The landlord stated that this rental property is operated by the housing society as a rent geared to income building where all but a handful of tenants have applied for and receive rental subsidies. Prior to this year, rent for those whose income exceeds the subsidy amounts was based on an economic rent calculation. As of an Amending Agreement with BC Housing, the previous system of providing rental subsidies has been replaced by a requirement that all tenants provide their income information after which their rent is calculated at 30% of their income. He said that those tenants whose monthly rent according to this formula would exceed \$850.00 for a bachelor/one bedroom have been "grandfathered" into a monthly rent of \$850.00 for their unit. For example when the tenant provided the landlord with his income information, it was determined that his monthly rent calculated on the basis of 30% of his income would be set at \$993.00. Rather than requesting this amount of monthly rent, BC Housing and the housing society had agreed to a maximum monthly rent of \$850.00 for this type of rental unit in this building. Any new applicants for housing in this building would be denied accommodation if their income resulted in a monthly rent in excess of \$850.00 for this type of rental unit.

The landlord also testified that a number of the tenants did eventually provide the landlord with income information. The landlord testified that the tenant in Unit 221 did

provide income information to the landlord sufficient to reduce his monthly rent significantly. As such, the landlord's representatives testified that the tenant in that Unit never did have his rent increased to \$850.00, and was in no way similarly situated to the other tenants whose applications were joined in this hearing. Since the agent representing the tenant in Unit 221 had no information to dispute the landlord's evidence, I advised the parties that there would be no need to consider his application for dispute resolution if I were to find that I had jurisdiction over these matters.

### Analysis

At the hearing, the landlord's representatives could not initially identify which portion of the legislation established that rent increases for this type of rental unit were not covered by the *Act*. However, the landlord testified repeatedly that BC Housing had assured them that this rental property was not subject to the rental increase provisions of the legislation.

Section 2 of the *Regulation* reads in part as follows:

*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: ...*

*(g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following: ...*

*(ii) the British Columbia Housing Management Commission; ...*

Based on the evidence before me, I find that there is undisputed evidence that as of February 2014 all tenants in this building were required to provide income information to the landlord, and not just those seeking subsidies. I heard undisputed sworn testimony from the landlord that each tenancy agreement in this building has a provision whereby the landlord is allowed to request income information at any point during the tenancy as a condition of the tenancy. Whether or not the landlord chose to require everyone in the building to provide this income information on an annual basis until this year does not affect the landlord's ability to do so within the terms of the tenancy agreements in this building.

Under these circumstances, I find little question that the tenants are required to provide income information when such information is requested by the landlords. Once the

landlord commenced requiring all tenants to produce income information, which forms the basis for the calculation of the monthly rent due from every tenant in the building, it is apparent to me that the monthly rent is related to the tenant's income. While some of the tenants may not have had their monthly rents increased to 30% of their income, the determination that their rent was to be capped at \$850.00 or some other amount for differently sized units was clearly dependent upon a consideration of their income. For example, the decision to keep the tenant's rent at \$850.00 instead of \$973.00 was made after considering and taking into account the income information he was required to provide as part of his agreement with the landlord.

For the above reasons, I find that section 2(g)(ii) of the *Regulation* prevents the tenants' applications to dispute the landlord's rent increases from falling within my jurisdiction.

#### Conclusion

I decline to hear this matter as I have no jurisdiction to consider the tenants' application.

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: September 12, 2014

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Residential Tenancy Branch

