



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE 127 SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, O

Introduction

These hearings were convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by the Tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”) and for ‘Other’ issues.

Two agents for the Landlord and an agent for the Tenant appeared for the original hearing on November 19, 2014. The original hearing was adjourned because of issues associated with the service of both parties’ documentary evidence. This was detailed in my Interim Decision dated November 19, 2014.

The same parties appeared for the reconvened hearing. Only one of the Landlord’s agents and the Tenant’s agent provided affirmed testimony. The parties confirmed receipt of the Landlord’s missing written evidence from the original hearing and the Tenant’s second evidence package.

The hearing process was explained and the parties were given a full opportunity to present their evidence, make submissions to me and rebut the other party’s evidence.

While both parties presented a large amount of evidence and provided lengthy testimony, I have only documented evidence that is relevant to the issues to be decided.

Issue(s) to be Decided

- Has the Tenant proved that the Landlord has not complied with the decision dated September 18, 2014 made by a different Arbitrator?
- Is the Tenant entitled to monetary compensation for damage or loss under the Act?

Background and Evidence

The parties agreed that this tenancy started on June 30, 2009 on a month to month basis. A written tenancy agreement was provided by the Landlord in written evidence.

The Landlord testified that section 5 of the agreement titled 'Material Covenants' shows that the Landlord has an operating agreement with the British Columbia Housing Management Commission ("BCHMC") or Canada Mortgage and Housing Commission ("CMHC") that involves strict rules which they have to follow. The Landlord testified that part of these strict rules includes the Tenant not being away from the rental suite for more than three months.

The signed tenancy agreement shows that the amount of rent payable at the onset of the tenancy under section 8 was \$703.00 each month. Under this same section, the tenancy agreement states that there are rules about the Tenants rent contribution outlined in Schedule A of the agreement. Under section 13 of the agreement pertaining to rent increases, it states that the rules regarding the Act do not apply if the Tenant is in subsidized housing and the rent is related to the Tenant's income.

Schedule A of the tenancy agreement states in part the following:

"A.4. Tenant's Rent Contribution

The tenant Rent Contribution is the amount the tenant pays monthly towards the full amount of the rent. The tenant will follow the same rules for paying the tenant Rent Contribution as the rules for paying rent. The amount of the Tenant Rent Contribution is shown in the BC rent scale or the federal rent scale. BCHMC or CMHC must approve the amount of the Tent Rent Contribution.

The Landlord will change the Tenant Rent Contribution if there is a change in the tenant's household income and assets. The landlord will give the tenant 30 days notice in writing of these changes. Adjustments may be made retroactively to the effective date of the change.

The income of any person occupying the premises as his or her principal residence, even if that person is not named in the tenancy agreement, will be included in the tenant's income.

A.5. Application for Rent Subsidy

Complete proof of income and assets and the properly completed Application for Rent Subsidy are important in this tenancy agreement. The Tenant agrees to give proof of

income and assets and to make an Application for Rent Subsidy and for BCHMC's auditing responsibilities.

If the tenant does not provide the proper and accurate information on the household income and assets, this will be an important breach of the tenancy agreement and the following will apply:

- *the tenant will have to pay the full rent shown in section 8. Amount of Rent;*
- *the landlord can terminate the tenancy agreement;*
- *BCHMC is legally allowed to recover from the tenant the rent subsidies paid by the BCHMC to which the tenant would not have otherwise been entitled. BCHMC is also allowed to recover the rent subsidies by other legal means; and*
- *interest will be charged on the money the Tenant owes to the Landlord and/or the BCHMC according to a court order or an Arbitrator's order or other legal orders. The interest will be charged monthly at the prime rate of the Royal Bank of Canada from the time the money was to be paid until it is repaid.*

The tenant agrees to fill out and sign an Application for Rent Subsidy

- *at move in,*
- *once a year after that,*
- *whenever the tenant's family household income changes, and*
- *when the landlord makes a reasonable request to the tenant.*

The tenant will allow BCHMC to check the tenant's personal information according to Freedom of Information and Protection of Privacy Act. The permission is needed by that Act so that BCHMC can carry out its audit responsibilities."

[Reproduced as written]

The Landlord testified that the Tenant's previous rent portion was \$406.00. In March 2014, the Landlord wrote to the Tenant regarding the review of the Tenant's annual income for the purpose of calculating the Tenant's subsidy. The letter required the Tenant to provide information on income from: BC Benefits, pension cheques, asset, savings, employment and investments. The letter also stipulated a deadline for these documents.

However, in a written letter to the Tenant dated May 5, 2014 the Landlord advised that because the Tenant had failed to sign the application for rent subsidy form and disclose income sources for each year, the rent would revert back to the economic rent for a one bedroom house. The Landlord testified that the current economic rent is \$750.00 and was payable by the Tenant effective July 1, 2014.

The Tenant's agent testified that the Landlord had no authority to increase the Tenant's rent and had not complied with the terms of a mutual agreement documented by the previous Arbitrator during the September 18, 2014 hearing. In the September 18, 2014 decision, the Arbitrator recorded the terms of the mutual agreement as follows:

"During this hearing, the parties reached an agreement to settle their dispute. Specifically, it was agreed that the landlord would withdraw the notice to end tenancy and allow the tenancy to continue.

Both parties agreed to the following terms:

- 1. The landlord agreed to allow the tenancy to continue at a monthly rent equal to the economic rent of \$750.00.*
- 2. The tenant agreed to pay the economic rent of \$750.00.*
- 3. The tenant agreed to provide appropriate information to the landlord to enable the landlord to make application for subsidy to B.C. Housing, on behalf of the tenant.*
- 4. The tenant agreed to withdraw all other claims made in this application against the landlord.*
- 5. Both parties confirmed that they understood and agreed to the terms of this agreement."*

[Reproduced as written]

The Tenant's agent submits that the Tenant has complied with the decision and provided the Landlord with the appropriate information but the Landlord has failed to submit the application for rent subsidy to B.C Housing. Therefore, the Tenant seeks damages and costs for \$10,000.00.

The Landlord's agent testified that they have attempted 17 times to request from the Tenant the information they need in order to submit the Tenant's application for subsidy to B.C. Housing. This comprises of seven oral requests, 8 requests in writing and two requests made during previous dispute resolution hearings.

The Landlord provided another written request to the Tenant dated October 23, 2014 which she referred to during the hearing. In this letter, the Landlord requests specific documentation that the Tenant is required to provide before the Landlord will submit the application for subsidy. The letter explains that the Landlord needs verification of absences and records of any other accounts that the Tenant holds in order to make a correct and proper application to B.C. Housing.

The Tenant's agent submitted that the Tenant already completed and signed a previous application for subsidy and had provided the Landlord with a copy of her bank statement which was sufficient for the Landlord to submit it to B.C Housing.

The Tenant's agent submitted that the Landlord does not have the authority to make requests from the Tenant for the additional information. The Tenant's agent asserted several times during the hearing that the process the Landlord must follow is for the Landlord to submit the application for rent subsidy to B.C. Housing and if they want to delve into the Tenant's history they can make a request through the Freedom of Information Act.

The Tenant made reference to the instructions that accompany the application for rent subsidy and submitted that the Landlord has not complied with the Freedom of Information Act and is requesting this information illegally and without authority.

The Landlord's agent denies this and states that in accordance with the written tenancy agreement, the Tenant is required to provide proper and accurate information on household income and assets. The tenancy agreement provides that a failure of the Tenant to provide this information is a breach of the tenancy agreement and the Tenant's rent payment will revert to the economic rent payable in the tenancy agreement.

The Landlord's agent also explained that the tenancy agreement can also be terminated if the Tenant has been absent from the premises for three consecutive months or longer even if rent is paid on time. The Landlord's agent testified that the Tenant has provided contradictory information on her absence from March 24 to July 15, 2014 and they have asked the Tenant to provide documentation to verify her account for this time.

The Landlord's agent explained that they have evidence that the Tenant holds other accounts which she has not declared and therefore, they seek additional information from the Tenant before they can proceed with the application for subsidy.

The Tenant's agent submits that the Landlords have no basis to assume these suspicions and if they do then it is up to them to disprove them and not the Tenant's responsibility to disprove them.

Analysis

I have considered the evidence of both parties in relation to this dispute and I find that the parties are in disagreement about whether the Tenant has complied with the mutual

agreement terms that requires the Tenant to provide appropriate information to enable the Landlord to make the application for rent subsidy.

Sections 41, 42 and 43 of the Act refer to what rent increases are allowed under the Act. This part of the Act also references the Residential Tenancy Regulations when considering issues associated with rent increases. Section 2 of the Regulation references parties who are exempt from the Act in relation to rent increases and specifically 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.

The Tenant's agent seems to be under the impression that the previous Arbitrator **ordered** the Landlord to accept the information provided to the Landlord, which in his opinion is reasonable. The Tenant's agent asserted that because the Landlord has

failed to submit the application for subsidy to B.C Housing, the Landlord is in violation of the previous Arbitrator's decision.

Notwithstanding the settlement agreement where the Tenant agreed to continue to pay the economic rent of \$750.00, I find that I have no authority in making a determination on how the Landlord calculates the Tenant's rent.

Sections 41, 42 and 43 of the Act do not govern the process by which a Tenant applies for and is considered and accepted for rent subsidy. The settlement agreement outlined in the previous arbitrator's decision merely reported the following term 3 as agreed to by the parties at that hearing:

3. *The tenant agreed to provide appropriate information to the landlord to enable the landlord to make application for subsidy to B.C. Housing, on behalf of the tenant.*

The previous arbitrator made no order with respect to this provision and, as such, there is no order that could have been contravened by the Landlord with respect to this provision. I find that I do not have the authority or jurisdiction to make legal findings on whether the Tenant has provided appropriate information for the application for rent subsidy. For these reasons, I am in no position to assess the extent to which the Landlord has contravened a finding of the previous Arbitrator.

The Tenant refers to the Landlord's violation of the B.C Housing procedures and the Freedom of Information and Protection of Privacy Act and asserted several times during the hearing that the Landlord has no authority to request the information that they are asking. The Tenant's agent made multiple references to the requirements a Landlord must follow in relation to the completion of the application for rent subsidy. In this respect, the Act has no jurisdiction to make a ruling regarding a third party contract the Landlord may have with another agency. Furthermore, I have no jurisdiction to interpret the provisions of the Freedom of Information and Protection of Privacy Act.

As a result, I find that the Tenant has failed to prove that the Landlord is not in compliance with the decision rendered by the previous Arbitrator. In turning my mind to the signed tenancy agreement that governs this tenancy, I find that the tenancy agreement clearly stipulates that the Tenant is required to provide the Landlord with complete, proper and accurate information before the Landlord can submit the application for rent subsidy. Furthermore, it clearly outlines the consequences of the Tenant's failure to provide this documentation.

Therefore, based on the above, I find that the Tenant's claim that the Landlord has not complied with the previous Arbitrator's decision is unproven and the Tenant's Application must fail.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application **without** leave to re-apply.

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 8, 2015

Residential Tenancy Branch

