



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes DRI, OPT, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution disputing an additional rent increase and seeking an order of possession.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

At the outset of the hearing the tenant confirmed he is living in the rental unit and as such has possession of the unit. Therefore, there is no need for the tenant to obtain an order of possession. I amend the tenant's Application for Dispute Resolution to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to disregard a rent increase; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 41, 42, 43, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 30, 2008 for a month to month tenancy for monthly rent that is based on a percentage of his income due on the 1st of each month.

Clause 9(a) of the tenancy agreement stipulates that the amount of rent payable from time to time will be determined on the basis of 30% of the tenant's and occupant's gross monthly household income or such other percentage as shall be determined by applying the BC Rent Scale applicable, or such other rent scale as the landlord may determine from time to time.

Clause 9(b) states the tenant agrees to complete and sign a declaration stating the number of occupants in the rental unit, their names, birthdates, gross incomes and assets on a form provided by the landlord, at least once in every 12 month period, and from time to time as required by the landlord; to provide proof of income and assets with such declaration; and that the declaration and information form part of the tenancy agreement.

The tenant submits that he seeks to have the landlord comply with Section 9(a) of the tenancy agreement and charge him only rent in the amount of 30% of his income but they are currently charging him 40 to 50% of his current income.

The tenant testified that his income fluctuates on a monthly basis as he gets work shifts to cover other staff absences and so the amount of work he gets changes in any given month. The tenant seeks to have the landlord assess his rental portion each month.

The landlord submits that in a previous Residential Tenancy Branch decision (252878) an Arbitrator determined that the *Act* did not apply to this tenancy as it is exempt under Section 2(a) of the Residential Tenancy Regulation. The tenant confirmed he had received this decision. The landlord provided the file number of this dispute.

Analysis

Upon review of the previous decision on this matter issued on October 20, 2014 I note the Arbitrator wrote:

“During the hearing the landlord’s representatives noted that the landlord is not bound by the rent increase rules of the Act and Regulation. I have determined that to be correct. Section 2(a) of the Residential Tenancy Regulation specifically exempts the landlord from the rent increase provisions of the Act. The tenant is therefore not a liberty to challenge the landlord’s rent increases by way of application for dispute resolution under the Act.” [reproduced as written]

Based on the previous decision, I find that a final and binding decision that stipulates that the landlord is exempt from the provisions under the *Act* on rent increases between these two parties for this tenancy has been provided in the decision of October 20, 2014. I therefore find the matter is *res judicata*.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black’s Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

Conclusion

Based on the above, I dismiss the tenant’s Application for Dispute Resolution in its entirety.

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 24, 2015

Residential Tenancy Branch

