



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MT, CNR, CNC, OLC, DRI, FF

Introduction

This hearing dealt with the landlord's application, which was made against both tenants, pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenant's cross-application, which was only made on behalf of tenant KA, not tenant OW, pursuant to the *Act* for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated March 10, 2015 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, KA ("tenant") and the landlord's agent, ES ("landlord"), attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed that he had authority to speak on behalf of his wife, the other tenant OW named in the Landlord's Application, as an

agent at this hearing. The landlord confirmed that she was the property manager for the landlord company named in these applications and that she had authority to speak on its behalf as an agent at this hearing. The landlord called “witness SH,” the landlord company’s financial comptroller, to testify on its behalf at this hearing. Both parties had an opportunity to ask questions and to cross-examine the witness.

The tenant confirmed receipt of the landlord’s 10 Day Notice on March 10, 2015, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord’s 10 Day Notice on March 10, 2015.

The tenant confirmed receipt of the landlord’s application for dispute resolution hearing package (“Landlord’s Application”) by way of registered mail, which the landlord confirmed was sent on March 21, 2015. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the Landlord’s Application.

The landlord confirmed receipt of the tenant’s application for dispute resolution hearing package (“Tenant’s Application”) by way of personal service and registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the Tenant’s Application.

At the outset of the hearing, the tenant confirmed that he was withdrawing his Application for more time to cancel the 10 Day Notice, as he applied within the required time limit under the *Act*. The tenant also withdrew his application for cancellation of the 1 Month Notice, as both parties confirmed that no 1 Month Notice was issued to the tenant. Accordingly, these portions of the tenant’s application are withdrawn.

Preliminary Issue – Tenant’s Adjournment Request

At the outset of the hearing, the tenant requested an adjournment of the hearing because he had to pick up his wife and daughter from a volunteering outing, as they did not have a ride home. He stated that he sent an email to the Residential Tenancy Branch (“RTB”) and the landlord on April 21, 2015, to request this adjournment. The landlord stated that she received an adjournment request from the tenant but that she was unable to contact him prior to the hearing, to discuss this issue. At the hearing, the landlord opposed the tenant’s adjournment request.

At the hearing, I advised the parties that I was denying the tenant’s adjournment request. I did so after taking into consideration the criteria established in Rule 6.4 of the RTB Rules of Procedure, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;*
- (b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);*
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
- (d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- (e) the possible prejudice to each party...*

In reaching my decision on the adjournment request, I have taken into account the following considerations and I advised both parties about these factors at the hearing. First, the tenant was aware of this volunteering outing since February 2015, prior to filing his Application on March 15, 2015, and prior to the landlord filing her Application on March 20, 2015, as the tenant filed first 1.5 months prior to this hearing date. The tenant could have requested a different hearing date at the time he filed his Application, since he knew he might be unavailable during this time. The tenant also could have requested an adjournment by consent with the landlord earlier than April 21, 2015. Second, the tenant could have arranged for an agent to attend on his behalf at this hearing, information that was clearly provided to him on his notice of hearing from the RTB. Third, I found that the tenant's reason for requesting the adjournment was within his control and was insufficient to delay this important hearing from proceeding. Fourth, both parties' applications deal with an Order of Possession, an urgent eviction issue that must be dealt with on an expedited basis, an issue that would likely prejudice the landlord if an adjournment was granted.

After advising both parties about my decision, I allowed the tenant time during the hearing in order to decide whether he wished to attend the hearing, after advising him of the consequences of not doing so, as an order of possession to evict him and his family, may be granted, in addition to a monetary order. I also provided the tenant with additional time during the hearing in order to contact his family and make alternate arrangements for their transport. The tenant ultimately decided to participate in the remainder of the hearing and advised that he had arranged for his family to wait for him to pick them up after the hearing.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order regarding a disputed additional rent increase?

Are the landlord and/or the tenant entitled to recover the filing fee(s) for their application(s)?

Background and Evidence

The landlord testified that this month to month tenancy began on October 1, 2005. A security deposit of \$450.00 was paid by the tenants on September 22, 2005 and the landlord continues to retain this deposit. Both parties provided a copy of the tenancy agreement with their Applications. The tenancy agreement states that monthly rent of \$1,500.00 is payable but both parties agreed that the tenants pay a rent contribution and have been subject to rent subsidies for this tenancy. The tenants continue to reside in the rental unit.

The tenant seeks an order that the monthly rent is \$308.00, indicating that the landlord issued an illegal rent increase to \$635.00 per month. On this basis, the tenant states that the 10 Day Notice is not valid, because it indicates an illegal and incorrect amount of rent due for March 1, 2015 in the amount of \$635.00 per month. The tenant also seeks to recover the \$50.00 filing fee paid for his Application from the landlord.

The landlord seeks a monetary order of \$1,270.00 for unpaid rent for March and April 2015. The landlord provided a tenant ledger indicating this unpaid rent. The landlord also seeks an NSF fee of \$25.00 for March 2015 rent, which she says is provided for in clause 10 of the tenancy agreement. The landlord provided a bank statement, dated March 4, 2015, indicating that the tenants' electronic funds transfer was returned in the

amount of \$635.00 for March 2015. The landlord seeks to recover the \$50.00 filing fee paid for its Application from the tenants.

The tenant testified that prior to March 1, 2015, the tenants' monthly rent was subsidized, as the rent contribution was \$308.00. He indicated that the landlord illegally increased his monthly rent to \$635.00 beginning on March 1, 2015, as claimed in the landlord's 10 Day Notice. The tenant claims that his rent should only be \$308.00 per month as per the provincial housing rules, which indicates that a minimum rent of this amount should be applied for a maximum of 6 months, where the tenant declares no income. The tenant stated that he provided sufficient proof and documentation to the landlord that he had no income and that the landlord is required to charge only the minimum rent of \$308.00 on this basis. The tenant stated that no rent was paid for March and April 2015 and that only \$308.00 per month, totalling \$616.00, is outstanding for this tenancy, not \$1,270.00 as the landlord claims. The tenant indicated that because the landlord attempted to withdraw the incorrect amount of \$635.00 from his account each month, the rent payments for March and April 2015 were unsuccessful.

The landlord disputes the tenant's claim, indicating that she did not issue a rent increase to the tenant, but that she applied a fixed ministry rate of \$635.00 per month for rent based on the tenant's household size of four people and employment information. The landlord provided a letter, dated February 11, 2015, to the tenant advising that him that based on the tenants' rental subsidy application received on December 2, 2014, the tenants' new monthly rental contribution amount would be \$635.00 per month effective as of March 1, 2015. The letter also states that if there were any changes in the income or family composition of the tenants, that it must be reported immediately to the landlord. The landlord provided a copy of the tenants' rental subsidy application, which indicates that the tenant is self-employed with three dependents and earning no income.

The landlord indicated that the tenant is required to apply for a rent subsidy in order for the landlord to re-establish the previous monthly rental contribution of \$308.00 per month, which the tenant failed to do. The landlord indicated that the tenant declared that he was self-employed with no income and that the landlord requires clarification of this information before it can establish the previous monthly rental contribution. The landlord stated that she only received a federal revenue agency document stating that the tenant is not eligible for employment insurance. The landlord indicated that she asked the tenant to produce a document from income assistance indicating that he is not entitled to income assistance and the reason for this rejection, in order to process the tenant's request for a rent subsidy. A letter, dated February 10, 2015, was provided by witness SH to the tenant, indicating that while he could not require the tenant to

apply for income assistance, sufficient proof was required beyond the tenant's word that he did not qualify for income assistance. A further letter, dated March 12, 2015, from witness SH to the tenant, explains the rental subsidy calculation further and advises the tenant that sufficient documentation is required in order to reduce the monthly rental contribution from \$635.00 per month to a rental subsidy.

The tenant stated that he was aware that the landlord requested this income assistance information when he received the landlord's letter, dated January 15, 2015. The letter warns that the tenants' subsidy for the rental unit could be cancelled effective on March 1, 2015, and that the tenant could be evicted pursuant to a 2 Month Notice to End Tenancy for no longer qualifying for a subsidized unit. The landlord provided a copy of this letter with its Application. The tenant stated that he did not provide this information to the landlord because he did not think it was required, since he produced all of the required information as per the checklist given to him by the landlord. The tenant also indicated that the application process for income assistance benefits was too lengthy and that the landlord only gave him notice on January 15 in order to provide the required documentation by January 23, 2015, which was not enough time. Witness SH indicated that the application process was very quick. The landlord provided a copy of a letter, dated January 26, 2015, from the landlord to the tenant, providing a provincial housing rent calculation guide and asking the tenant for the required documentation again, as well as extending the submission date to February 9, 2015. The tenant further indicated that he did not want to provide this information because the landlord has a personal vendetta against him. The tenant stated that in his application for a rental subsidy, he advised the landlord that he was self-employed, was earning no income and was using his children's registered education savings plan money to live, a fund that is shielded from the ministry's calculation of income. The tenant provided a number of letters from January and February 2015, addressed to the landlord, regarding his position about the rental subsidy and rental contribution guidelines.

Witness SH testified that he handles the financial operations of the landlord company including rent subsidy calculations for tenancies. He confirmed that he had authority to speak on behalf of the landlord company at this hearing. Witness SH indicated that as per the tenancy agreement, the tenant's rent is \$1,500.00 per month but the tenant is only required to pay a monthly rent contribution. He stated that rent contribution is not subject to the *Act* with respect to rent increases. Witness SH indicated that the tenant had to declare his annual income in order to qualify for a rent subsidy at the rental unit. Witness SH stated that he is required to use the provincial housing rent calculation guideline in order to determine the amount of the tenants' monthly rent contribution, which is done annually and based on the number of household members. Witness SH stated that the tenant declared no income on his rental subsidy form and that the

provincial guideline provides a flat rent table based on the family size in accordance with the income assistance rate. He stated that this monthly rental rate is \$635.00 for a family of four, which he said included the tenant, the tenant's wife and the tenant's two children.

Witness SH stated that he requires proof from the tenant, in the form of a document from income assistance, stating that the tenant is ineligible to receive income assistance benefits, in which case the minimum amount of rent for a family of four, can be applied for the tenant's monthly rent contribution. He stated that this document was not received from the tenant, only a notice of assessment from the federal revenue agency and bank statements from the tenant. Witness SH indicated that he cannot force the tenant to apply for income assistance benefits, but that an application is required in order to produce sufficient documentation to the landlord that the tenant does qualify for this assistance. Otherwise, the tenant is subject to the flat rate rental contribution of \$635.00 per month, which was instituted beginning on March 1, 2015.

The landlord also seeks to recover the \$50.00 filing fee paid for its Application from the tenant.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings around each are set out below.

Rent Increase

I accept the landlord's and witness SH's testimony that the tenants failed to provide sufficient evidence of their income, such that the previous monthly rental subsidy rate of \$308.00 could not be applied to this rental unit. The tenant admitted that he had notice from the landlord requiring him to provide sufficient documentation from income assistance as per the landlord's letter of January 15, 2015. I find that the tenant provided insufficient reasons as to why he could not provide the required documentation to the landlord within the appropriate timelines. The tenant stated that there was not enough time given by the landlord to provide this information, as the process is slow. The tenant did not make an effort to even apply for the income assistance benefits or to show how long the process takes, particularly if there was a delay on the part of income assistance. Witness SH disputed this contention, indicating that the process was quick. The tenant stated that the landlord has a vendetta against him but failed to provide

sufficient information that he was the only tenant being asked for this information by the landlord. Witness SH stated that this process is used for all tenants if they require a rental subsidy. The tenant indicated that the landlord gave him a checklist of the required documentation to produce to the landlord. The landlord and witness SH stated that as per their policies and guidelines, which are in accordance with the provincial housing regulation guidelines, they require the income assistance documentation from the tenants before they can approve the monthly rental subsidy and reduce it to \$308.00.

I find that the landlord did not impose a rent increase, as rental subsidies and rental contributions are not subject to the rental increase rules under the *Act* or the *Residential Tenancy Regulation* ("*Regulation*"). Accordingly, the tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement and an order regarding a disputed additional rent increase, are dismissed without leave to reapply.

Order of Possession

Both parties agreed that no rent was paid for March 2015. In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days of receiving the 10 Day Notice led to the end of this tenancy on March 20, 2015, the effective date on the 10 Day Notice. In this case, this required the tenants, their children and anyone else on the premises to vacate the premises by March 20, 2015. As this has not occurred, I find that the landlord is entitled to a 5 day Order of Possession.

Monetary Orders

Section 26 of the *Act* requires that rent be paid on the date indicated in the tenancy agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

As noted above, rental subsidies and rental contributions are not subject to the rental increase rules under the *Act* or the *Regulation*. Accordingly, my determination regarding the rent in this rental unit is based on a balance of probabilities, after reviewing the documentary and testimonial evidence of both parties. The landlord testified that a monthly rental contribution amount was applied to the rental unit, as per the provincial guidelines, which witness SH testified is \$635.00 per month for a family of

four people at the tenants' rental unit. The tenant disputes this amount as the correct guideline amount, but the tenant failed to provide any documentary evidence to support his position. The landlord provided sworn testimony from witness SH indicating that he is the financial comptroller for the landlord company and that this was the correct provincial guideline amount. Accordingly, I prefer the evidence of witness SH, regarding this amount, on a balance of probabilities. I find that the tenants' monthly rental contribution for this rental unit as of March 1, 2015 is \$635.00.

Given the findings made above and based on both parties' testimony that rent was not paid for March or April 2015, I find that the landlord is entitled to rental arrears of \$635.00 for each of March and April 2015, totalling \$1,270.00. I also find that the landlord is entitled to NSF fees of \$25.00 for March 2015 rent, as per clause 10 of the tenancy agreement, in accordance with section 7(1)(d) and 7(2) of the *Regulation*.

As May 2015 rent was not yet due at the time of this hearing and I am unaware as to whether this rent was paid by the tenants after this hearing, the landlord may make an application for dispute resolution to recover this rent amount, if it is unpaid.

The landlord continues to hold the tenants' security deposit of \$450.00. Interest of \$15.93 is payable from September 22, 2005 until the date of this decision on May 19, 2015. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus interest, totalling \$465.93, in partial satisfaction of the monetary award.

As the landlord was successful in its Application, I find that it is entitled to recover the \$50.00 filing fee paid for the Application from the tenants.

As the tenant was unsuccessful in his Application, I find that he is not entitled to recover the \$50.00 filing fee paid for the Application from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **five days after service of this Order** on the tenant(s). Should the tenant(s) or anyone on the premises 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 order in the landlord's favour in the amount of \$879.07 against the tenants as follows:

Item	Amount
Unpaid March 2015 Rent	\$635.00
NSF Fee for March 2015	25.00
Unpaid April 2015 Rent	635.00
Less Security Deposit with Interest	-465.93
Recovery of Landlord's Application Filing Fee	50.00
Total Monetary Award	\$879.07

The landlord is provided with a monetary order in the amount of \$879.07 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Tenant's Application for more time to cancel the 10 Day Notice and cancellation of the 1 Month Notice, are withdrawn. The remainder of the Tenant's Application is dismissed without leave to reapply.

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: May 19, 2015

Residential Tenancy Branch

