



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated February 4, 2016
- b. An order disputing an additional rent increase
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The hearing was initially set for April 20, 2016. However, the landlord was not able to prove that it delivered documentary evidence to the Tenant. As a result I ordered that the application be adjourned to the next available date which was set for May 26, 2016. I delayed writing this decision for two weeks as there was a possibility the parties might settle this matter. In a letter dated June 9, 2016 I was advised by the solicitor for the landlord that the parties were not able to settle the matter.

I find that the 10 Notice to End Tenancy was sufficiently served on the Tenant on February 4, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord carries on business on February 11, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated February 4, 2016?
- b. Whether the tenant is entitled to an order disputing an addition rent increase.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on January 1, 2015. The rent was \$575 per month payable in advance on the first day of the month.. The tenant did not pay a security deposit. The rental unit is a one bedroom unit.

The landlord was not able to find the tenant's original tenancy agreement. The landlord produced a tenancy agreement which was signed by the tenant on January 20, 2016 that states the initial economic rent was \$1100 per month and started on January 1, 2015. The landlord acknowledged the amount of the rent was in error and should read \$907 per month. The tenancy agreement also included the following terms:

- The economic rent, and the contribution which the Tenant is required to pay towards the economic rent is subject to change by the Landlord from time to time.
- The Landlord operates subsidized or low-income housing unit. The contribution which the Tenant will pay each month towards the rent for the suite is related to the Tenant's income...
- The provisions of the Residential Tenancy Act (the "Act") relating to changes to rent do not apply to this tenancy agreement or to the Landlord.
- The Tenant must provide complete and truthful annual income and asset information and supporting documentation to the Landlord for every occupant of the suite, as and when the Landlord requests. Failure by the Tenant to fully and promptly cooperate in making a declaration as required by the Landlord, or any misrepresentation by omission or commission is an important breach of the tenancy agreement and shall be cause for termination of the Tenancy.

The rental property was purchased by the landlord a few years ago. The landlord produced the Rent Schedule for the rental property for March 2016. It shows that most units had a market rent of \$796 to \$907 per month but are subsidized with the tenants paying \$150 to \$175 less than market rent. The lowest rent shows a subsidized rent of \$600 per month.

The agent for the tenant is his brother. At the time the tenancy began the agent was the Property Manager for the building. The previous Executive Director testified that while she did not have the documents before her, she believes she would have approved the

subsidy for the Tenant based on the information that was provided. The previous Executive Director retired in the late winter or early spring of 2016.

SH testified she was hired by the Landlord in June 2015 and was asked to do a review of the rent files for the rental building. In the course of her review she discovered the file of the tenant and many others were incomplete. She asked MO the tenant's agent (who was the building manager) on 5 occasions to provide her with the lease for the Tenant but he failed to do so.

MO was the Acting Executive Director for the period April 15, 2015 to September 3, 2015. He was relieved of his duties on September 3, 2016.

JR was appointed as the Executive Director for the landlord on September 1, 2015. She testified a review of the rent rolls indicated that there was insufficient income verification on a number of the files. Letters were sent out to many of the residents requesting income verification. The rent schedule shows that 11 tenants provided documents that were received by the landlord in the middle to end of September 2015.

On December 10, 2015 the landlord wrote to the Tenant stating "As you are aware, we do not have a tenancy agreement on file for you and it is coming up on one year that you have resided in the above noted unit. The letter asked that the tenant please provide the information required in the attached document by December 31, 2015. The attached document provided a check list including the following:

- A completed and signed Application for Rent Subsidy
- Recent cheque stub(s) from BC Benefits/CPP/EI/OAS/GIS OR document showing amounts.
- If working, copies of most recent pay stub(s) showing year-to-year information or copies of 4 months' worth of pay stubs.
- Copies of 2 most recent bank statements for ALL bank accounts.
- Copies of most recent statement(s) of all assets
- Completed copy of 2014 Income Tax Return(s).

On January 5, 2016 the landlord wrote a letter to the Tenant making a Second and Final Request to complete and return the documents.

On January 20, 2016 the tenant attended at the landlord's office and produced a pay stub. The landlord informed him this was not sufficient.

The landlord took the position that as the tenant failed to apply for a rental subsidy and failed to produce sufficient income verification documentation the rent charged would be the sum of \$907 commencing February 1, 2016. In addition the tenant agreed to pay \$25 for cablevision. The tenant continued to pay \$575 per month for February, March April and May 2016. There are rental arrears in the sum of \$357 per month which totals \$1428 for the months of February, March, April and May.

The tenant provided the landlord and the Branch with a copy of his tax summary for 2015 and bank statement prior to the hearing in May 2016.

The landlord takes the position the Tenant has failed to provide a completed and signed copy of the Application for Rent Subsidy and failed to provide the necessary documents for the landlord to consider his application for a subsidy.

The Application for Dispute Resolution filed by the Tenant states "This unit is not a subsidized unit and either is any of the units in the building."

JR testified the landlord owns 18 buildings including the rental property which are classified as Division 1 properties. These are not subsidized but unless tenants receive a subsidy. There are between 800 to 940 rental units in those buildings. Approximately 400 tenants receive a subsidy. The landlord also owns 6 Division 2 buildings and two Division 1 buildings. There are 44 rental units in the rental property. Most of the tenants in those buildings receive a rental subsidy.

The landlord produced a copy of the Supreme Court of British Columbia decision in *Samji v HFBC Housing Foundation* 2012 BCSC 1367 where the court dismissed the tenants' application for judicial review of various dispute Resolution officers' (arbitrators) decisions. The dispute resolution officers determined there was no jurisdiction to consider the complaints of the tenants as the Foundation was exempt from the rental provisions of the Residential Tenancy Act as it was a non-profit housing corporation that had agreements to operate the residential property with the BC Municipal Housing Corporation and the Canada Mortgage and Housing Corporation.

The landlord also produced a sworn affidavit of the then Executive Director (Tenant's Witness 1) used in the Samji Supreme Court Hearing which included the following testimony:

- The landlord was incorporate in 1952 as a provincial non-profit housing society.
- As of the date of the affidavit it owned 24 income-based, subsidized building. Currently 11 of those buildings were fully paid off and the remaining building has a mortgage debt.

- The landlord has agreements with Canadian Mortgage Housing Corporation for some of its other mortgage encumbered properties. Some of other properties have agreements with the British Columbia Housing Management Commission.
- The landlord relies on the affidavit for this hearing. JR confirmed the basis of the landlord's operation remain essentially the same today.

Tenant's Evidence:

The Advocate for the tenant objected to his brother giving evidence because of his health situation. I determined it was appropriate that the tenant answer the landlord's questions. The tenant gave the following evidence:

- He is under treatment from his doctor for depression and under medication. He was not aware of what he was signing when he signed the lease in January 2016.
- He has limited skills training. He moved to Vancouver from Nova Scotia in late 2014.
- He was not employed by the employer when he rented the rental unit. Later, the tenant was hired to perform landscaping services but this did not occur at the start.
- There was no agreement in place.
- His brother did not receive the letters dated December 10, 2015
- He could not remember receiving the letter of January 5, 2016.
- The landlord failed to explain the tenancy agreement to his brother prior to him signing it in January 2016.
- He has paid rent of \$575 per month since February. He is the only person living in the rental unit.
- BB (Tenant's Witness 1) testified she was the Executive Director until she retired in April 2015. The administration of the subsidies is complicated especially where the landlord has purchased a new building with pre-existing tenancies.
- She would have approved the tenant's subsidy after receiving appropriate documents. She did not have the documents in her possession but would have determined he was qualified.
- It is against the landlord's policy to target one individual.
- She would have expected that requests for income verification would have been sent out in July or August.

Analysis:

The landlord was not able to find a copy of the original tenancy agreement that was entered between the landlord and the tenant in January 2015. At some stage it was in

the possession of the tenant's agent when he was employed by the landlord. I determined that the rent of \$575 is a subsidized rent based on the following evidence:

- The rental unit is a one bedroom rental unit. The Rent Schedule produced by the landlord for March 2016 shows the market rent for most units is \$907 per month, the rent paid was after the subsidy was between \$650 to \$850 per month. I am not able to find any rents on the schedule which is lower than \$600 per month. Granted there is a 15 month difference between January 2015 and March 2016. However, the 15 month period does not explain how the tenant would be paying a market rent of \$575 on January 1, 2015.
- Tenant Witness #1 testified she approved the tenant's application for a subsidy.

The tenant testified he did not understand what he was signing when he signed the agreement on January 20, 2016. It is not necessary for me to consider whether that agreement is binding.

I am satisfied based on the evidence presented that the Tenant was aware that he was in subsidized housing and that in December 2015 the landlord was requesting the he provide an application for a subsidy and income verification to allow the landlord to determine whether the subsidy was justify and if so how much. I am satisfied the tenant that the tenant was aware of the consequences of the failure to provide an application and the need to provide financial verification.

Section 2 of the Residential Tenancy Act Regulations provides as follows:

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 landlord testified that

I determined that *Samji v HFBC Housing Foundation* 2012 BCSC 1367 is binding and on point. The tenants in that case failed to submit their application for a rent subsidy and they lost their subsidy. As a result the landlord charged market rent. The tenants alleged the landlord made an illegal increase. Various dispute resolution officers dismissed the complaints of the tenants on the basis there was no jurisdiction to hear the complaints as the landlord was exempt from the rental provision of the Residential Tenancy Act. The dispute resolution officers considered the argument that while the landlord had agreement with the BC Municipal Housing Corporation and the Canada Mortgage and Housing Corporation it did not have an agreement with respect to the tenant's particular units or the buildings which they resided. The court approved the dispute resolution officer's decision and held that the requirement for exemption from the Act applied even if the landlord did not have an agreement relating to the specific building or rental unit. I determined the issue of whether this is an illegal rent increase is not a matter that an arbitrator can consider as it is exempt under the Regulations.

In essence the tenant alleged that the landlord has improperly targeted him and is acting outside of its policies. I determined the application of the landlord's policies relating to determination of a subsidy is not an issue that an arbitrator has the jurisdiction to consider.

In summary I determined the rental unit in question is a subsidized rental unit and that the consideration of a rent increase under the provisions of the Residential Tenancy Act is exempt because of section 2 of the Regulations. An arbitrator does not have the jurisdiction to consider a rent increase where the landlord is exempt. I determined the landlord was justified to increase the rent to market rent as the tenant failed to provide an Application for a Subsidy and the necessary documents to prove his financial situation.

Determination and Orders:

As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy and the application of the tenant disputing an additional rent increase. I order that the tenancy shall end on the date set out in the Notice. Further, I dismissed the tenant's application for the cost of the filing fee.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. The letter from the landlord dated June 9, 2016 states that should the RTB rule in favor of the landlord, the Landlord would agree to an Order for Possession effective July 30, 2016 so long as July's rent of \$575 is paid on or before July 1, 2016. I do not have the legal ability to force the tenant to pay the rent for July and as a result I set the Order for Possession for June 30, 2016. However, given the late date of this decision I would hope that the landlord would not enforce the Order for Possession if the tenant pays the rent for July by July 1, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: June 15, 2016.

Residential Tenancy Branch