



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding METRO VANCOUVER HOUSING CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S FFL CNR MNDCT MT OLC PSF

### Introduction

This hearing dealt with applications from both the tenant and the corporate landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant named the individual landlord and applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;

The corporate landlord applied for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for the application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties were represented by counsel. It was confirmed that the named personal landlord is an employee of the corporate landlord and was acting in her capacity as agent at all times.

As both parties were present I confirmed service of documents. The parties confirmed that they were each in receipt of the other's notice of dispute resolution and evidence. I

find that the parties were served with the respective applications and evidence in accordance with sections 88 and 89 of the *Act*.

Initially, I was scheduled to hear only the tenant's application today. The landlord's application was originally scheduled to be heard on July 16, 2018. The parties requested that I bring the matters together so that both could be heard together. The tenant testified that they had received the landlord's application for dispute resolution and were prepared to proceed. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be considered for each application I ordered that the matters be brought together and heard at once.

At the outset of the hearing the parties confirmed that the tenant has vacated the rental unit. The tenant withdrew her application in its entirety and explained that the monetary award she was seeking in her application refers to the fact that she disputes the landlord's monetary claim.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The parties agree on the following facts. This tenancy began in November, 2015. The rental unit is a subsidized unit where occupants are required to demonstrate they meet eligibility criteria based on income, number of occupants and other factors. Tenants are responsible for providing written documents showing they qualify for rental subsidy on an annual basis. The tenant was determined to qualify for a subsidized unit. She contributed \$500.00 towards her monthly rent with the remaining balance provided by rental assistance.

On August 22, 2017, an individual who identified himself as the tenant's partner informed the landlord that he had been a resident of the rental unit since May, 2016. The individual provided government issued identification which shows his address as the rental unit. A copy of the government issued ID was submitted into evidence. In addition, the landlord's witness said that he showed some utility bills for the rental unit address in his name. The landlord's witness also testified that a vehicle that was often seen parked at the rental building was identified as belonging to the tenant's partner.

The tenant submits that their partner would stay overnight at the rental unit but has always maintained a separate residence. The tenant submitted into written evidence a copy of the partner's government issued ID that was also provided to the landlord when their eligibility for rental subsidy was calculated.

Both copies of the government issued ID submitted into evidence were issued on the same date but the one submitted by the tenant shows a different address while the one submitted by the landlord provides the address as the rental unit. The tenant submits that the address provided on ID is based on self-declaration and that it is possible the partner simply changed his ID without informing the tenant or being based on his actual tenancy.

The tenant gave evidence that she and her partner split up in August, 2017 and she believes that he knowingly gave false information to the landlord in order to disqualify her for rental subsidies.

The landlord seeks to clawback the rental subsidies provided to the tenant during the tenancy in the amount of \$7,442.00. The landlord said that based on the evidence they were provided by the partner they concluded that the tenant knowingly falsified her application for rental subsidies and is liable to repay the entire amount.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. The standard of proof is on a balance of probabilities, which is to say that it is more likely than not that the event claimed occurred. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

In the present matter each party has submitted into documentary evidence the partner's ID which appears identical save for the address. The landlord submits that based on the information they were provided the tenant breached the conditions of the tenancy agreement by providing false information. The tenant submits that they did not lie on

their application. The tenant states that they submitted the documentation and information they were provided by their partner at the time.

I find that the totality of the evidence, including the testimonies of the parties and witnesses and the documentary evidence, does not meet the onus of establishing on a balance of probabilities that there has been a violation by the tenant from which losses have resulted.

I find that it is possible that, as the landlord submits, the tenant and her partner knowingly gave false information on their application for rental subsidy by stating that the partner did not reside in the rental unit. However, I find it equally probable that the tenant's partner unilaterally gave false information to the landlord that he was residing in the rental unit when he had residence elsewhere. Having carefully scrutinized the two versions of the partner's ID submitted into evidence I am unable to state that one is a clear forgery and one is an undoctored government issued ID.

I find that the landlord's evidence does not meet the onus of establishing that there has been a violation of the Act, regulations or tenancy agreement by the tenant. The landlord's witness stated that she was presented with utility bills addressed to the partner at the rental unit but I do not find that to be sufficient to establish that the partner was a full time resident at the dispute address. Similarly, I find that the testimony about the frequency with which the partner's car was witnessed on the property to be inconclusive. Even if the vehicle was stored on the rental property I do not find that to be sufficient evidence to conclude that the partner resided in the rental unit.

The tenant provided reasonable explanation of how she and the partner shared some utility costs and some bills were assigned under his name for financial purposes. The tenant also gave evidence that the partner's vehicle was often parked at the rental building but he maintained a separate residence. I found that both parties were credible and their testimonies equally believable.

Under the circumstances, as I find that both version of events are equally likely I find that the applicant has not met their onus by showing their version is more likely on a balance of probabilities. Therefore, I dismiss the landlord's application.

Conclusion

The tenant's application is withdrawn in its entirety.

The landlord'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: March 8, 2018

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Residential Tenancy Branch