



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, OLC, FF

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the respondent's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 8, 2018 ("10 Day Notice"), pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the respondent to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant, the applicant's lawyer and the respondent's agent ("respondent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The respondent confirmed that he was the executive director of the respondent company named in this application and that he had permission to speak on its behalf at this hearing. The applicant confirmed that her lawyer had permission to speak on her behalf at this hearing. This hearing lasted approximately 58 minutes in order to allow both parties to attempt settlement negotiations and to fully present their submissions regarding Residential Tenancy Branch ("RTB") jurisdiction over this application.

The respondent confirmed receipt of the applicant's application for dispute resolution hearing package and the applicant's lawyer confirmed receipt of the respondent's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the respondent was duly served with the applicant's application and the applicant was duly served with the respondent's written evidence package.

During the hearing, the respondent confirmed that he had cancelled the respondent's 10 Day Notice and he would be continuing the applicant's tenancy at the rental unit.

I asked both parties to provide verbal submissions on whether I had jurisdiction to hear the remainder of the applicant's application under the *Act*, as the respondent raised the issue during the hearing.

Issue to be Decided

Does the RTB have jurisdiction to consider this application?

Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important submissions and my findings are set out below.

The applicant's lawyer stated that the applicant's monetary claim for \$1,000.00 was related to an overpayment in rent of \$262.00. He claimed that the applicant's total market rent for her rental unit was \$1,340.00 and while this amount had not changed, the applicant's rent subsidy contribution amount was increased by an external provincial housing authority to \$740.00 retroactively effective on February 1, 2018, rather than on March 1, 2018. He explained that the applicant was also seeking legal, hearing and service costs of \$195.00 associated with this application. He maintained that the balance amount was for pain and suffering due to the applicant going into premature labour with her baby and leaving her employment early, as a result of this application and the rent subsidy issue.

The applicant's lawyer submits that I have jurisdiction to hear this application under the *Act*. He said that the respondent company named in this application was only exempted from very specific provisions of the *Act*. He explained that the applicant's rent subsidy contribution, not her total market rent, was increased by the provincial housing authority, and it was done retroactively and against the *Act*. He explained that because it was a rent increase, regardless of the fact that the housing authority increased it, the RTB had jurisdiction over the matter.

The respondent submits that I have no jurisdiction to hear this claim because it is excluded by the *Act*. He stated that the RTB does not determine rent subsidy amounts,

only the provincial housing authority does. He said that the applicant seeks to recover what she says is an overpayment in rent for an amount relating to an increase in the applicant's monthly rental subsidy contribution for February 2018, not the total market rent, and that this subsidy was increased by the provincial housing authority, not by the respondent. He explained that he was unsure as to whether I had jurisdiction over the remainder of the applicant's monetary claim but it appeared to be related to the same application and the same "cause and effect." He maintained that the applicant is required to pursue her claims in Court against the provincial housing authority who determines the subsidy contribution, not the respondent who did not determine this amount or increase the rent.

Analysis

Since there was no dispute regarding the 10 Day Notice and whether the tenancy was going to continue, as the respondent indicated those were not in issue, this decision refers to the remainder of the applicant's application regarding the monetary claim for \$1,000.00. The applicant's lawyer confirmed that the only orders sought from the respondent were in relation to the above monetary order.

I note that neither party provided submissions regarding the formula or criteria used by the provincial housing authority to make a determination regarding the applicant's rent subsidy contribution amount. Neither party referenced the documents that they provided for this hearing. The applicant did not name the provincial housing authority as a party in this application. I note that the applicant had the benefit of legal counsel at this hearing.

Section 43 of the *Act* states the following, in part:

Amount of rent increase

- 43 (1) *A landlord may impose a rent increase only up to the amount*
- (a) calculated in accordance with the regulations,*
 - (b) ordered by the director on an application under subsection (3), or*
 - (c) agreed to by the tenant in writing.*

...

- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.*

At the hearing, both parties agreed that the applicant's rent contribution, not her total market rent, increased in February 2018, due to an amount determined by the provincial housing authority. Therefore, this is not a dispute as to whether the respondent

increased the rent on its own accord, in relation to the amount determined by the *Regulation*. It is not an increase determined by an RTB Arbitrator and it is not an amount agreed to by the applicant in writing. It is an amount determined by an external third party, the provincial housing authority, based on a specific criteria and formula. It is not an amount or criteria determined by the RTB or an amount that the RTB has discretion over.

I find that the applicant's entire monetary application of \$1,000.00 is related to this disputed subsidy portion and her application costs as well as pain and suffering claimed, relate to this application and rent subsidy issue.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the applicant's application.

Conclusion

I decline jurisdiction over the applicant's application.

I make no determination on the merits of the applicant's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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 30, 2018

Residential Tenancy Branch