



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony. The tenant was assisted by an Advocate, D.D. who attended via conference call. Both parties confirmed that the tenant served the landlord with the notice of hearing package in person on March 5, 2020; the notice of amendment to the tenant's application for dispute and the submitted documentary evidence via email on June 16, 2020; and the landlord served the tenant with the submitted documentary evidence by posting it on the tenant's rental unit door on June 25, 2020. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

### Preliminary Issue(s)

At the outset, the landlord raised an issue on the Residential Tenancy Branch's jurisdiction in this matter. The landlord has stated that the tenant has already argued the same matter which was brought before the Supreme Court of British Columbia for a finding on a rent increase. The tenant disputes this interpretation, arguing that the tenant's issue is for an amended monetary claim of \$2,040.00 which is for reimbursement of rent overpaid. The tenant stated that the application before the Supreme Court of British Columbia was an injunction preventing the landlord from "Actioning their proposed monthly increase in Social Housing Rent for the plaintiff after

only 10 months and with only 7 days notice from \$1,177.00 per month to \$1,585.00 per month as from February 1, 2020 until the Plaintiff's Notice of Civil Claim lodged on January 29, 2020 is heard by this Court, and their decision to terminate the Total BC Housing subsidy of the plaintiff, until such a formal decision is made by BC Housing itself; and that an injunction be immediately granted to stop any proposed meeting of members of the Mole Hill Community Housing Society taking place on Monday February 10, 2020, due to breaches of both the BC Society Act and Regulations as well as the Society's own bylaws and constitution in the calling of an notification of any such meeting. Both parties confirmed that the tenant's application was dismissed by the Court. In reviewing the copy of the application filed with the Supreme Court of British Columbia, I find that the tenant's monetary claim before me is not the same as that filed before the Supreme Court of British Columbia. The hearing shall proceed.

The tenant was clear in that he seeks recovery of rent paid of \$1,020.00 per month for a two month period and a finding that the rent increase by the landlord was not lawful. The landlord has argued that the Residential Tenancy Branch does not have the jurisdiction to decide on the "Administration of Rent" for tenancy agreement subject to a rent subsidy. Both parties agreed that the tenant is no longer entitled to a rent subsidy and is now part of a "Low-End-Market Rent". The tenant argued that subject to the signed tenancy agreement, clause #18, Rent on page 9 of 15 states,

- a. *The Rent for the Rental Unit is \$551.00 a month. The Tenant is responsible for the full Rent as stated above or the Tenant Contribution (30% of gross income) if eligible for a Rent Subsidy.*
- b. *If the Tenant is eligible to receive a Rent Subsidy the Tenant agrees;*
  - i. *To complete and sign a declaration stating the number of occupants in the Rental Unit, their names, birth dates, gross incomes and assets on the form provided by the Landlord at least once every twelve (12) month period and from time to time as required by the Landlord.*
  - ii. *To provide proof of income and assets with such declaration and;*
  - iii. *That the declaration and information will form part of this Tenancy Agreement.*

The tenant with the assistance of the Advocate accepted that the subsidy is not an issue in this proceeding. The tenant seeks recovery of the overpaid rent and a finding on the current rate of rent.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and a finding on the current rate of rent?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2018 as per the submitted copy of the signed tenancy agreement dated January 26, 2018. The monthly rent was \$510.00. A security deposit of \$513.50 was paid. The tenant was also required to pay \$41.00 a month for utilities.

The tenant seeks a monetary claim of \$2,040.00 for recovery of \$1,020.00 per month for two months. The tenant stated that the tenant is paying \$1,020.00 over and above the total monthly rent payable under the current rental agreement signed. The tenant argues that the landlord is requiring the tenant to pay \$1,530.00 per month plus utilities as of February 1, 2020. The tenant argues that the rental agreement states that full rent is \$551.00 plus utilities. The tenant has paid the additional \$1,020.00 per month but seeks reimbursement and a finding on the monthly rent owed.

The tenant refers to clause #18 of the signed tenancy agreement which states,

- c. **The Rent for the Rental Unit is \$551.00 a month.** The Tenant is responsible for the full Rent as stated above or the Tenant Contribution (30% of gross income) if eligible for a Rent Subsidy.*

The tenant argues that this is the full rent due as per the signed tenancy agreement.

The landlord disputes the tenant's claim arguing that the Residential Tenancy Branch does not have jurisdiction to hear that the tenant's request on a rent increase. The landlord argues that the tenant's application for dispute of a rent increase is exempt from the Residential Tenancy Act which deals with rent increase based upon subsidized housing.

The landlord states that the tenant's tenancy agreement is subject to an agreement under the Provincial Housing Program (Homes BC). The landlord stated that under this

program 102 (60% of the total) suites have the tenant rent contribution calculated based upon household income and the remainder to be paid by a subsidy from BC Housing, and 68 (40%) have a “low-end-market” rents set at a percentage of assessed market rent. Tenants may move from subsidized to LEM or vice versa depending on household income. The landlord states that from February 2018 to January 2020, the tenant’s rental was designated as a subsidized unit. As of February 2020, the rental unit was designated as a low-end-market suite. The landlord states that the tenant’s designation change was made using the housing program guidelines based upon the tenant’s personal circumstances. The landlord stated that this is the reason for the change in the tenant’s rent contribution increase.

The landlord also argues that the rent indicated on the signed tenancy agreement is in reference to the subsidized rent amount of \$510.00. The landlord refers to the submitted copy of a BC Housing, Application for Rent Subsidy. The landlord argues that this document was completed by the landlord’s agent and the tenant on January 26, 2018 the same date as that of the signed tenancy agreement. The landlord argues that in part iv of this document the Economic Rent is stated as \$1,156.00; rent of \$510.00; \$40.00 for other charges; \$551.00 as the total rent contribution by the tenant and a rent subsidy calculated as \$646.00.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the affirmed evidence of both parties and find on a balance of probabilities that the tenant has failed to establish a claim for compensation of \$2,040.00 for an overpayment of rent. A review of the signed tenancy agreement does provide for a rent of \$510.00, however, I find that the tenant entered into a signed tenancy agreement with the landlord which is a landlord which operates under the Provincial Housing Program. The tenant also completed and signed a BC Housing Application for Rent Subsidy on the same date of January 26, 2018. In this document it is clear that the tenancy involves a rent subsidy. Calculations provided in part iv of that document show that the

economic rent was \$1,156.00; tenant's total rent contribution was \$551.00 and that there was a rent subsidy of \$646.00. On this basis, I find that the tenant has failed to provide sufficient evidence that there was an overpayment of rent. The tenant's monetary claim is dismissed.

On the issue of a finding regarding the tenant's current rent rate, I find that I do not have jurisdiction for this matter. The landlord operates under the guidance of BC Housing and tenant rent contributions are determined in keeping with their guidelines. This portion of the tenant's application is dismissed.

### Conclusion

The tenant's application is dismissed.

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: July 07, 2020

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Residential Tenancy Branch