



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on December 2, 2020, for monetary compensation and to recover the cost of the filing fee.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy, and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to re-apply.

I have reviewed evidence and testimony before me. I refer only to relevant facts and issues in this decision.

At the outset of the hearing the landlord’s agent stated that the tenant’s portion of rent is determined by the BC Housing program, and if the tenant complies with their request to provide the requested documents that they would revisit the tenant’s portion of rent. The tenant responded, “why should they”. As a result, I find I have no option other than to continue with the hearing.

I explained to the tenant at the hearing that I have no authority to determine their portion of the rent. That is the sole discretion of landlord as rent is based on a subsidize rent program. The tenant was hostile during the hearing and told me that, I the Arbitrator, should “shut up”.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant submits that they received the Notice on December 3, 2020. The tenant stated they did not pay the outstanding rent or utilities stated in the Notice because the rent calculation by the landlord is wrong and the utilities are included in the rent. File in evidence is a copy of the Notice.

The tenant stated that their rent is subsidized by BC Housing and based on 30% of their income. The tenant stated that they have used their Notice of Assessment to calculate what the correct amount of their rent should be. The tenant submits that it is not BC Housing or the landlord rights to determine what their income is, only the Canada Revenue Agency has that right.

The tenant stated that they have complied with the BC Housing guidelines handbook for providing proof of income by their notice of assessment and that is all they are entitled to receive. The tenant stated they have paid all rent owed based on their own calculation of rent. Filed in evidence is a portion of the guideline.

The landlord's agent stated that their organization has a contract with BC housing to provide affordable rent through a rent subsidy program. The agent stated as a requirement for subsidy, all tenants must complete a declaration of income and supporting documents for verification each year; however, the tenant is refusing to provide supporting documents as requested, and the tenant will only provide a copy of their notice of assessment, which is not what we have been requesting.

The landlord's agent stated that when the tenant's rent contribution was assessed in August 2018, the tenant's portion was calculated at \$723.00; however, the tenant determined their rent was \$700.00 and that was the amount they paid, leaving a shortfall of \$23.00 per month. The landlord stated that the tenant refused to provide the documents so we could determine if the tenant's calculation was correct.

The landlord's agent stated when the tenant's income was assessed in September 2019 they determined the tenant's portion was calculated at \$1,000.00, because the tenant refused to provide proof of income, by supporting documents as requested. The landlord stated that the tenant determined their rent was \$700.00 and that was the amount the tenant paid, leaving a shortfall of \$300.00 per month.

The landlord's agent stated that the tenant is required to sign a declaration of income and provide all supporting document for income verification, not just their notice of tax assessment. The landlord stated that the tenant is simply refusing to do so.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Public housing body", as defined under section 49.1 means a prescribed person or organization. Section 2 of the Residential Tenancy Regulations provide for the entities that meet the definition of public housing body and include:

- (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;
 - (iv) a municipality;
 - (v) a regional district;

[My emphasis underlined]

In this case, the landlord is a housing organization that operates the residential property in accordance with an operating agreement with the British Columbia Housing Management Commission. Accordingly, I find the landlord is a public housing body.

"Subsidized rental unit" is defined under section 49.1 to mean a rental unit that is:

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

[My emphasis underlined]

In this case, the tenant's rent is based on 30% of their income, which is subsidized by BC Housing. The tenant has provided the landlord with a copy of their Notice of Tax Assessment; however, the tenant is refusing to provide the supporting documents as requested. I find the tenant's action is troubling, when this matter may have been resolved by providing the requested document for verification this protecting their tenancy.

The tenant refers to a BC Housing Guideline handbook at the hearing; however, a guideline is just a guideline. The landlord and BC Housing have the right to request any documents necessary to verify the tenant's proof of income, which the tenant has refused to do so. The onus is on the tenant to provide such documents when requested.

The guideline that the tenant has referred to states in part the following for important consideration:

Proof of income should be no more than three months old. If a resident has seasonal, fluctuating, or self-employment income, use the most recent Income Tax Return (ITR) and Notice of Assessment. If the proof of income appears incomplete or invalid, take steps to verify the information.

First of all, Revenue Canada does not determine the requirements of subsidized housing. The landlord has the right to make their own assessment of the tenant's income and has the right to verify all aspects of income to ensure they are true and accurate, this would include the full version of their income tax, proof of monthly income,

banks statements and any other documents they may considered necessary to determine the tenant's eligibility each year.

An assessment from Revenue Canada, is just an assessment of what has been filed. It does not disclose the source of the income, nor has it been audited. The landlord is entitled to conduct their own audit to verify income. If the verification cannot be completed due to lack of disclosure from receiver of the subsidy, then they are at risk is losing such subsidy, or a different calculation could be determined. Subsidized rent is not an automatic entitlement for those having received such benefits.

The landlord has calculated the tenant portion of rent to be \$723.00 from August 2018 to September 30, 2019. The tenant determined on their own that they should only pay \$700.00. The tenant does not have the right to determine their portion of rent payable as their rent is subsidized. The tenant could have simply provided the requested document if they believed the calculation was inaccurate, for verification, which they refused to do.

The landlord has calculated the tenant's rent portion to be \$1,000.00 commencing October 1, 2020. The tenant determined on their own that they should only pay \$700.00. Again, the tenant could have simply provided the requested document for verification but continued to refuse to do so.

Even at this hearing the tenant was given a final opportunity to provide these documents to the landlord, which they again refused.

Based, on the above, I find the tenant has failed to comply with the requirements of BC Housing subsidy program by not providing the requested documents for income verification. I find the landlord had the right to determine if the tenant was entitled to receive any subsidy and if so, determine the tenant's portion of the rent. The tenant does not have the right to set their own rate of subsidy. As earlier stated it is not my role, to determine the tenant's eligibility for subsidy.

I find the tenant has failed to pay their entire portion of rent as calculated by the landlord, leaving a shortfall of \$23.00 each month from August 2018 to September 2019, and leaving a shortfall of \$300.00 each month from October 2019 to present .

I find the Notice issued on December 2, 2020, complies with section 46, and 52 of the Act, and is valid and remains in full force and effect. Therefore, I dismiss the tenant's

application. As the tenant's application is dismissed, I find the tenant is not entitled to recover the cost of the filing fee.

As I have dismissed the tenant's application to cancel the Notice, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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 02, 2021

Residential Tenancy Branch