Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, DRI, PSF, FFT

Introduction

On March 23, 2021 the tenant filed an Application for Dispute Resolution (the "Application") in this matter. They applied for the following:

- dispute of a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities
- dispute of a rent increase that is above the amount allowed by law
- the landlord's compliance with the legislation and/or the tenancy agreement
- the landlord's provision of service or facilities required by the tenancy agreement or law
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on July 9, 2021. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present their oral testimony during the hearing.

Preliminary Matters

tenant's documentary evidence

At the outset of the hearing, the tenant confirmed they received the landlord's prepared documentary evidence in advance. The landlord provided this to the tenant by attaching it to the door of the rental unit, as well as sending via email.

The landlord stated they received a notice of this hearing; however, they did not receive documents from the tenant that the tenant intended to use as evidence in the hearing. In their Application, the tenant stated in regard to certain pieces of their evidence, concerning bank statements: "I am not giving a copy of the Bank Statements included here to the respondent, as that is one of the points of contention is if I need to."

The primary issue in this hearing is the tenant's provision of required information in regard to their application for rent subsidy. This is financial information. The tenant applied for clarification on whether the landlord's policy in asking for this information to the extent that they have is legally valid. After the tenant's Application for this hearing, based on legal advice they disclosed the requested information as part of their rent subsidy application. To be clear, that is a separate process from that of the tenant's Application for this hearing.

While the tenant providing that information to the landlord does make most of the issues here inconsequential and not subject to my deliberation, I find this does verify as fact that the tenant did not disclose their prepared evidence to the landlord in this hearing as required. In the *Residential Tenancy Branch Rules of Procedure*, Rule 3.1 specifies that an applicant must serve to the respondent "any other evidence submitted to the Residential Tenancy Branch directly . . . with the Application for Dispute Resolution." I find the tenant has not done so here. This breaches one main objective of the hearing process: to ensure a fair, efficient, and consistent process for resolving disputes.

Further, Rule 3.11 provides: "If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence." In line with this, I refuse to consider the tenant's prepared documentary evidence. My consideration of documentary evidence in this hearing is limited to that provided by the landlord to the tenant – I find the landlord disclosed this information as required by Rule 3.15, within the prescribed time limit that is "not less than seven days before the hearing."

dispute of a notice to end tenancy

In their written submission, dated June 22, 2021, the landlord provided that they never issued a notice to end the tenancy to the tenant. In the hearing, the tenant verified they did not receive a document to end the tenancy; rather, they made this indication on their Application because "[the landlord] threatened that they would evict because of a breach of tenancy because of no forms. . ."

Given that the *Act* defines that an application is in relation to a dispute on a party's rights, obligations and prohibitions under the *Act*, I find the *possibility* of the landlord initiating an end to the tenancy is not properly the subject of dispute resolution. Both parties confirmed there was no such notice issued to the tenant; for this reason, I dismiss this portion of the tenant's Application without leave to reapply.

dispute of a rent increase

Similarly, the tenant applied to dispute a rent increase that is above the amount allowed by law. This was for an amount of $880 as indicated on their Application. In the hearing, the tenant verified that the landlord threatened to raise the tenant's rent to market value, despite the tenant having subsidized rent in place. On my questioning, the tenant verified that they applied for this relief under the *Act* as a preventive measure.

As above, I find a *possible* rent increase is not properly the subject of dispute resolution. It is not in relation to a party's rights, obligations, or prohibitions under the *Act*. I dismiss this portion of the tenant's Application without leave to reapply.

In the alternative, the landlord in their written submission set out that the *Residential Tenancy Regulation* bars the Residential Tenancy Branch from ruling on matters of rent increase for social housing of the type in this tenancy. In the hearing, the landlord explained how the rent is set proportionally between the respective housing authority and the responsible ministry – a unilateral, landlord-set "rent increase" of the type described in Part 3 of the *Act* is not possible in this scenario.

As stated plainly in the *Regulation*, I find the rental unit here is exempt from s. 41 of the *Act*, where the rent is related to the tenant's income. I have no jurisdiction to hear the matter where the *Act* does not apply. For this reason in the alternative, I dismiss this portion of the tenant's Application without leave to reapply.

Issue(s) to be Decided

- Is the tenant entitled to an order compelling the landlord to comply with the *Act*, the *Regulation*, and/or the tenancy agreement, pursuant to s. 62 of the *Act*?

- Is the tenant entitled to an order that the landlord provide services/facilities required by the agreement or the law, pursuant to s. 62 of the *Act*?

- Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement for this hearing. It specifies that the rent is "geared to income." The tenancy started on September 1, 2018, after both parties

signed the agreement on August 30, 2018. The rent amount was set for $1,064. In the hearing the tenant verified that their own paid rent amount each month is $312.

The landlord explained that the rent is paid by government entitlement. There is an administrative process to determine the proportion of rent amounts that come from each of BC Housing and the responsible ministry; this is based on the tenant's income as reported by the tenant.

The landlord pointed to a specific portion of the tenancy agreement to show that a failure to comply with the landlord's request for documentation is a breach of tenancy. This is set out in paragraph 17 b of the agreement:

> The Tenant agrees to provide such information as is requested from time to time and not less than once a year by the Landlord for calculation of the Rent Subsidy. . .If the Tenant misrepresents or fails to disclose any such information. . . the Commission may withhold the Rent Subsidy and such misrepresentation or failure to disclose will be deemed as a material breach of the Tenancy Agreement and the following will apply:
>
> iii. Such misrepresentation or failure to disclose Income and Assets by a Tenant entitles the Landlord to end the Tenancy Agreement.

The landlord also provided a copy of what they termed the "Subsidy Agreement" that is part of the tenancy agreement. This provides that "the applicant" (i.e. the tenant) agrees that their failure to disclose information requested by the landlord allows the landlord to end the tenancy. Additionally, the landlord may recover amounts previously paid to the tenant.

The landlord set out that they made their initial request for required information from the tenant on January 7, 2021. This continued through to March 26, 2021. The tenant provided the required documents on March 26, and the landlord's record shows the completed application for rent subsidy that they completed with dollar amounts on the tenant's behalf. This is for the effective period of annual review, beginning on April 1, 2021.

The tenant here disputes the landlord's request for full income documentation. They acknowledge they provided the information that the landlord requested on March 26. Their income status had changed more recently, to that of "self-employed" and this means their income fluctuates over the course of a fiscal year. They pointed to certain portions in the BC Housing Rent Management Guide and Program Guide (the links to which were provided by the landlord) to show that the landlord is asking for much more documentation than what is set out in BC Housing's own guidebook. More precisely, the guide states more simply that the most

recent Income Tax Return and Notice of Assessment will suffice; here the landlord is asking for bank account information and this amount to “chicanery” or “bad faith in contract”.

The tenant also rationalized their need to be assessed as self-employed, rather than that of a disability status, as violating a trade secret. Additionally, their position is that if Canada’s Revenue Agency finds income information sufficient for their standards, this should be enough assurance for the landlord on their status.

The landlord provided redacted pieces of the information that the tenant did eventually provide on March 26, 2021. They pointed to the Rent Calculation Guide provided by BC Housing as authorizing specifically the practice of a housing provider (here, the landlord) asking for more information where required. They stressed their need for having requirements in place where audits by BC Government for housing subsidies are tangible and occur with frequency. This practice is not out of the norm where individuals are assessed on a disability status, and the landlord here underlined that they treat everybody with equality and fairness.

Analysis

I find the evidence is clear that the landlord is obligated by statute to ensure subsidized tenants report on their household income. This is set out in the tenancy agreement that the landlord provided, as well as the subsidy agreement that is attached to the Application for Rent Subsidy. The landlord also pointed to the BC Housing Rent Management Guide and Program Guide as authorizing the landlord’s request for income information from the tenant.

I find these are obligations of the tenant. They are set out clearly in the tenancy agreement. The tenant has not provided sufficient evidence to show the landlord has no authority to ask for additional income information. I find it reasonable for the landlord to do so, particularly where the tenant is stating they have a self-employed status, which has changed more recently. The tenant’s submissions about trade secrets, or the landlord using the information for some other purpose is without merit.

I find the landlord has not acted in bad faith; additionally, they are not acting outside of the agreement or the provisions of the *Act*. The rights of the tenant have not been violated in this situation where the landlord assists the tenant to make the application for rent subsidy. This necessarily entails income information in fulsome detail from the tenant, and the landlord has the right – as well as the statutory obligation to the housing authority – to ask for it.

Here, the tenant provided the information for this year’s cycle to the landlord. I find the landlord has the right and obligation to continue to ask the tenant for income details where

necessary to do so. I find the landlord has shown the need for this; this is not offset by the tenant's submissions that it is not necessary for them to do so.

The landlord has not withheld the provision of a service or facility based on a determination that the tenant withheld income information. For this reason, this portion of the tenant's Application is dismissed without leave to reapply.

I find the landlord is not avoiding compliance with the *Act*, the *Regulation*, or the tenancy agreement. I find this is an established practice and it does not constitute a breach going forward. I similarly dismiss this portion of the tenant's Application, without leave to reapply. The landlord is not in a position to circumvent this governing structure on the tenant's behalf. I find the landlord's own obligations outweigh the concerns of the tenant that too much is being revealed.

Because the tenant was not successful in their Application, I dismiss their claim for reimbursement of the Application filing fee.

Conclusion

For the reasons above, I dismiss the tenant's application in its entirety, without leave to reapply. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 14, 2021

Residential Tenancy Branch