



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Red Door Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 9, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act, tenancy agreement or regulations; and
- a monetary order for compensation.

The Tenant, the Tenant's Advocate L.H., and the Landlord's Agent D.K. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the *Act*, tenancy agreement, or regulations, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on November 1, 2006. According to the tenancy agreement, the economic rent of the rental unit at the time of entering the tenancy was \$1,352.00. The parties agreed that the Tenant must demonstrate their eligibility to receive subsidized rent through BC Housing. The Tenant paid a security deposit in the amount of \$561.00 which the Landlord continues to hold. A tenancy agreement between the parties was submitted in support. The Landlord's Agent confirmed that the Landlord has an operating agreement with BC Housing.

The Tenant's Advocate stated that the Tenant has been overcharged rent in the amount of \$360.00 per month as they have not received a rent subsidy. It is the Tenant's position that the Landlord has a contractual obligation under the tenancy agreement to calculate their rent in accordance with the BC rent scale, as set out by BC housing in the Rent Calculation Guide.

The Tenant's Advocate stated that even if the Landlord does not have an obligation under the tenancy agreement, the operation agreement between BC housing and Landlord in accordance with the parameters set out by the supreme court of Canada in *Fraser River Pile & Dredge LTD V. Can-dive* is an agreement that the tenant can derive rights from as a third party.

The Tenant's Advocate stated that even if the landlord has neither of those obligations, they must at least provide the tenant with the information of how they are calculating their rent. The Tenant is seeking monetary compensation in the amount of \$4,320.00 for the overpayment of rent in the amount of \$360.00 for the past 12 months. The Tenant is also seeking an order that the Landlord must comply with the BC housing in the Rent Calculation Guide.

The tenancy agreement includes a term which outlines the Landlord's ability to calculate the Tenants' income when determining their eligibility for subsidized rent, which states;

17. Income and Assets

- a. The income of all persons occupying the Rental Unit, regardless of whether they are listed on the Tenancy Agreement or not, will be included for the purpose of determining the Tenants' income. Any change in the number of Tenants and/or Occupants is material and of great importance to the decision of the Landlord to continue the Tenancy. The Tenant agrees to notify the Landlord promptly of any change in the number of Tenants and/or Occupants in the premises and in the Tenants' and/or Occupants' income and assets.
- b. The Tenant agrees to provide such information as is requested from time to time and not less than once a year by the Landlord and/or the Commission for calculation of the Rent Subsidy or for Auditing purposes. If the Tenant misrepresents or fails to disclose any information requested in the **Declaration of Income and Assets** 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:
 - i. The Commission is entitled to recover from the Tenant in contract or otherwise the Rent Subsidies paid by the Commission under or in connection with the Tenancy Agreement to which the Tenant would not otherwise have been entitled and this remedy is not exclusive and may be exercised by the Commission in addition to any other remedies available to the Commission in law or in equity and in addition to any remedies of the Landlord as set out in the Tenancy Agreement;
 - ii. Money owing by the Tenant, to the Landlord and/or the Commission under the Tenancy Agreement pursuant to a Court Order or Arbitrator's Order or otherwise will bear interest at the prime rate of the Royal Bank of Canada from and including the time such money becomes payable, calculated and payable monthly until repayment of both, before and after, judgement; and such misrepresentation of Income or assets by a Tenant entitles the Landlord to end the Tenancy Agreement.
 - iii. Such misrepresentation or failure to disclose of Income and Assets by a Tenant entitles the Landlord to end the Tenancy Agreement.
 - iv. The Tenant consents to the Commission verifying personal information, as defined in the "**Freedom of Information and Protection of Privacy Act**", which consents is required by the Act to enable the Commission to carry out its audit function.

The Landlord's Agent stated that she has conducted several reviews of the Tenant's income and that there were discrepancies found which would indicate that the Tenant has undisclosed income and assets such as self employment income, credit card payments doubling monthly income and also expenses that far exceed the monthly income declaration. As such, the Landlords Agent stated that on February 9, 2021 a Short-Term Review package was sent out to the Tenant with the required documentation which needed to be submitted. The Landlord's Agent stated that on the last week of February 2021 the documents were received and reviewed, on the 9th day of March 2021 another letter was sent to the Tenant requesting more information.

The Landlord's Agent stated that the response received was undated and unsigned with questions and stating that the Tenant "is not obligated to explain to you every transaction on her bank account and have a reasonable expectation of privacy".

The Landlord's Agent stated that the Tenant has signed a tenancy agreement and an Application for Subsidy that clearly state "The Tenant agrees to provide such information as is requested from time to time and not less than once a year by the Landlord and/or the Commission for calculation of the rent subsidy or for auditing

purposes” and “consents to the landlord or BC Housing verifying personal information as defined in the *Freedom of Information and Protection of Privacy Act*, which consent is required by the Act to enable the Landlord to carry out its audit function”.

The Landlord’s Agent stated that the requested documentation remains outstanding, and the Tenant remains noncompliant with the short-term review, at present the Landlord does not receive subsidy for the rental unit and has not received subsidy for this unit since January 2021.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 2 of the Residential Tenancy Regulations outlines the Exemptions from the Act. Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act *[assignment and subletting, rent increases]* if the rent of the units is related to the tenant's income:

(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;
- (h) any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

In this case, I accept that the Landlord has an Operating Agreement with BC Housing. As such, I find that the Landlord is exempt from the requirements relating to rent increases set in the *Act*, pursuant to Section 2 of the Regulation.

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant is claiming monetary compensation in the amount of \$4,320.00 as the Landlord has not complied with the tenancy agreement and consider the BC housing in the Rent Calculation Guide when determining the Tenant's eligibility for rent subsidy. The Tenant is also seeking an order that the Landlord comply with the tenancy agreement with respect to adhering to the BC housing in the Rent Calculation Guide.

I find that the tenancy agreement between the parties does not require the Landlord to only consider the BC housing in the Rent Calculation Guide when determining the Tenant's eligibility for rent subsidy. I accept that the Landlord is permitted to conduct reviews of the Tenant's income from time to time, and not less that once a year. I accept that the Landlord found discrepancies which would indicate that the Tenant has

disclosed income and assets such as self employment income, credit card payments doubling the monthly income and also expenses that far exceed the monthly income declaration. I accept that the Landlord has requested further documentation which remains outstanding, and the Tenant remains noncompliant with the short-term review, which has resulted in the Landlord not receiving subsidy for the rental unit since January 2021.

I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord has breached any term of the tenancy agreement. As such, I dismiss the Tenant's Application in its entirety without leave to reapply.

Conclusion

The Tenant has provided insufficient evidence to demonstrate that the Landlord has breach the Act, tenancy agreement, or Regulations. As such, the Tenants 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: November 23, 2021

Residential Tenancy Branch