



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FFT

Introduction

On September 22, 2022, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to dispute a rent increase and for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The matter was set for a teleconference hearing. The Tenant and agents for the Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Has the Landlord issued an illegal rent increase?
- Is the Tenant entitled to an order for the Landlord to comply with the Act or tenancy agreement?

Background and Evidence

Both parties testified that the tenancy began on May 1 2012, and is on a month to month basis. Rent is geared to income. Subsidized rent in the amount of \$1,500.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00.

The Landlord and Tenant provided a copy of the tenancy agreement and an addendum. The addendum is signed by the Tenant and provides terms regarding the eligibility for rent subsidy. The addendum provides that in order to calculate the Tenant's rent calculation, the Tenant will need to provide a declaration of occupants and income every 12 months, or from time to time as requested by the Landlord.

The Tenant provided testimony acknowledging that she signed the tenancy agreement and addendum. She testified that last year her income increased and the Landlord increased the rent from \$1,500.00 to \$1,532.00 each month. She testified that because of her income level she no longer qualifies for subsidy and she does not need subsidy anymore. She referred to letter she received from the Landlord that states she no longer qualifies for subsidy.

The Tenant takes the position that since she no longer qualifies for subsidy, and since she does not want subsidy, she should only be required to pay the rent of \$1,500.00 each month as per the tenancy agreement.

The Tenant testified that she was paying rent using a preauthorized service and because of transaction service fees she began paying the rent by cheque. She stated that the Landlord was not in agreement with this change and threatened to end her tenancy if she pays rent by cheque. The Tenant wants the Landlord to accept the rent payments by cheque.

The Landlord testified that the residential property is operated under agreement with BC Housing and the agreement stipulates that all tenants must be in need. The Landlord testified that all tenants of the residential property pay 30% of their gross monthly income as rent. The residential property does not have any units paying market rent and there is no option to stay and pay market rent.

The Landlord testified that they are not prone to evicting tenants with a Two Month Notice when their income is higher than their guidelines because of the current rental market. The Landlord stated that if the Tenant feels that she does not qualify, then she should move on.

The Landlord stated that the Tenant signed the tenancy agreement and there is nothing that says rent will be set at the original amount if a tenant fails to qualify for subsidy.

In response to the dispute regarding method of paying rent, the Landlord testified that the Tenant was paying rent by electronic funds transfer and the Landlord received three non sufficient fund notifications. The Landlord asked the Tenant to pay the rent by money order or certified cheque.

The Landlord referred to the Rules and Regulations for the residential property that was initialled by the Tenant at the start of the tenancy. Rule #1 provides that automatic debit, cheques, money orders, or certified cheques will only be accepted as monthly rent payments. Monthly post-dated cheques will be accepted. All cheques not honored by a bank will need to be immediately replaced with a certified cheque or money order only and there is a service charge of \$25.00 to the Tenant.

Analysis

A public housing body means a prescribed person or organization. A subsidized rental unit means a rental unit that is operated by a public housing body, or on behalf of a public housing body, and 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.

Section 3.1 of the Residential Tenancy Regulation provides that the British Columbia Housing Management Commission is public housing bodies and in accordance with section 2 of the Regulation are exempt from the requirements of sections 34(2), 41, 42 and 43 of the Act which pertain to subletting and rent increases.

Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord operates subsidized rental units at the residential property under an agreement with BC Housing and is exempt from the Act regarding rent increases.

I find that the letter the Landlord sent to the Tenant did not inform the Tenant that she does not qualify for rent subsidy. The Landlord cautioned the Tenant that failure to provide income documents could result in not qualifying. Nevertheless, I find that the Landlord is entitled to determine whether or not a person qualifies for subsidy. I find that the increase of rent from \$1,500.00 per month to \$1,532.00 was not an illegal rent increase.

I find that the Tenants position that her rent should be \$1,500.00 each month is incorrect. The Rent of \$1,500.00 was based on a determination of rent geared to

income at the time she moved in. To accept the Tenant's position that she should be entitled to pay \$1,500.00 would mean that tenants could earn more income but not have to pay an increased amount of rent based on their increased income. This is completely contrary to the rent geared to income policy.

The Tenant's claim to dispute a rent increase is dismissed.

With regard to the method of paying rent, I find that the Rules and Regulations set out the method of payment and are an enforceable term and condition of the tenancy. The Rules provide that the Tenant may pay the rent by that automatic debit, cheques, money orders, or certified cheque. I find that the Tenant has the right to continue paying the monthly rent by cheque. If the cheque is not honored by the bank, the Tenant must immediately replace the cheque with a certified cheque or money order and pay a service charge of \$25.00 to the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful with part of her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenants' dispute of a rent increase is not successful and is dismissed without leave to reapply.

I find that the Tenants have the right to continue paying the monthly rent by cheque. If the cheque is not honored by the bank, the Tenants must immediately replace the cheque with a certified cheque or money order and also pay a service charge of \$25.00 to the Landlord.

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: February 14, 2023

Residential Tenancy Branch