



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing was convened as a result of the Tenants' Applications for Dispute Resolution made on February 24, 2020 and again on March 24, 2022 seeking a monetary order for compensation and for the return of the filing fee, (the "Applications").

I note that this hearing was scheduled in response to the outcome of THE APPEAL from the order of the Honorable Madam Justice Lyer of the Supreme Court of British Columbia at Vancouver dated June 25, 2021, coming on for hearing at Vancouver on February 4, 2022, and hearing counsel for both appellant and respondent, the judgement is as follows: THIS COURT ORDERS that the appeal is allowed and the matter referred back to the Residential Tenancy Branch for reconsideration.

The hearing was conducted via teleconference on November 22, 2022 and was attended by the Tenant, the Tenant's Counsel J.B., the Landlord's Agents Q.W., S.M., and the Landlord's Counsel K.L. The original hearing did not complete within the allotted time, therefore, the hearing was subsequently adjourned. The Reconvened hearing took place April 4, 2023 and was attended by the same parties, except for the Landlord was represented by their Counsel P.O. during the reconvened hearing.

Neither party raised any issues of the service of documents and/or evidence during either hearing. I find the Applications and documentary evidence packages 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. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to an order granting the return of the filing fees, pursuant to Section 72 of the *Act*?

Background and Evidence

A tenancy agreement between the parties was submitted into evidence. According to the tenancy agreement, the tenancy began on February 1, 2018. Regarding rent, the tenancy agreement reads:

3. Rent

- a. The rent for the Rental Unit will be \$510 per month
- b. The rent will be adjusted from time to time in accordance with our Operating Agreement with BC Housing

18. Rent

- a. The rent for the Rental Unit is \$551 a month. The tenant is responsible for the full Rent as stated above or the Tenant Rent Contribution (30% of gross income) if eligible for a Rent Subsidy

The parties agreed that the Tenant resides in subsidized housing operated by the Landlord pursuant to an agreement with BC Housing.

The parties agreed that in January 2020, the Landlord took the position that the Tenant no longer qualified for subsidized rent and demanded that the Tenant pay rent in the amount of \$1,530.00 per month. The parties agreed that the Tenant has been paying the increased amount of rent each month, however, the Tenant is disputing that rent should be increased more than the \$510.00 which is the amount that the parties had agreed to in the tenancy agreement. The Tenant is seeking a reimbursement for the over payment of rent each month in the amount of \$1,020.00 since February 1, 2020.

The Landlord is of the position that the Residential Tenancy Branch may not rule on this rent increase because social housing of this type is exempted from the portion of the

Residential Tenancy Act which deals with rent increases as it is outside of the jurisdiction of the RTB.

The Landlord stated that the Guide to the HOMES BC Operating Agreement currently exists in the form of guide manuals which are updated regularly. The directives on rent subsidy calculation and household composition have been altered or refined many times since the Operating Agreement was signed. The specific guides which apply and submitted into evidence are;

- BC Housing Rent Calculation Guide
- BC Housing Resident Management Guide
- BC Housing Provider Program Guide

The Landlord stated the following: that all units at the rental property are subsidized. There are two forms of subsidy: Rent subsidy payment; and Repayable Assistance. Under this housing program 102 (60% of the total) units have the tenant rent contribution calculated upon household income ("Rent Geared to Income" or "RGI") and balance paid by a subsidy from BC Housing (Rent Subsidy Payments). The other 68 units (40%) have a "low-endmarket" (LEM) rent set at a percentage of a professionally assessed market rent. For this latter group, BC Housing loans a monthly subsidy to MHCHS to cover any budgetary shortfall, to be repaid by MHCHS when the program expires (Repayable Assistance). BC Housing's Program Guide describes that the designation of a suite as from RGI or LEM or vice versa can be changed depending on changes to their tenants' household income or composition.

The Landlord determined that the Tenant's custody time of his child had changed and was therefore considered to be "overhoused", being defined as a single person in a 2-bedroom suite. The Landlord stated that the Tenant's rental unit changed from subsidized to LEM as of February 1st, 2020. The Landlord stated that the Tenant's unit designation change in February 2020 is a correct application of the housing program guidelines based on the Tenant's personal circumstances, and accounts for the increase in the Tenant's rent. The Landlord stated that as of February 2020, the Tenant's rental unit was designated a low-end-market (LEM) suite and the Tenant's rent was calculated based on a professional market rent assessment.

In addition, the Landlord referred to the most recent rental subsidy application which was signed between the parties on March 15, 2019. The Landlord stated that the Application outlined the economic rent for the rental unit without subsidy was \$1,177.00. While there was some discussion during the hearing regarding a previous subsidy

application being completed in January 2018 where the Tenant claimed that he signed the application before it was completed, the Tenant did not contest signing the completed 2019 subsidy application. The subsidy application was submitted into evidence.

The Landlord noted that the first clause of the Subsidy Agreement states: "I declare that the information given in this Application is true, correct and complete in all respects". 95. The Subsidy Agreement further states: "IT IS THE RESPONSIBILITY OF THE SIGNEES TO ENSURE ALL INFORMATION IN THE APPLICATION IS CORRECT, even if the Application is completed with the assistance of others".

The Landlord stated that the market rent for the rental unit as of February 2020 increased to \$1530.00. As the Tenant no longer qualified for the subsidy, the Landlord required the Tenant to pay the full amount of economic rent which was outlined in a letter dated January 24, 2020 which was sent to the Tenant and submitted into evidence. The Landlord believes that the Tenant's rent was calculated based on a professional market rent assessment, which the Tenant is required to pay.

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. However, I find that I do have jurisdiction to interpret the tenancy agreement and decide what the current rental rate was based on what the parties had agreed to. I find that the principles of contract still apply despite subsidized housing.

According to Section 14(1) of the *Act*; A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

- (a) a rent increase in accordance with Part 3 of this Act;
- (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;
- (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

In this case, I find that the tenancy agreement that the parties entered into at the start of the tenancy indicates that rent was \$510.00 per month. The tenancy agreement provided that the rent could change in accordance with the landlord's Operating Agreement with BC Housing. I find that the tenancy agreement does not stipulate what amount the Tenant would pay if they were not to receive a subsidy.

The rent subsidy application signed between both parties on March 15, 2019 stated that the economic rent for the rental unit without subsidy was \$1,177.00. I find by signing the March 15, 2019 subsidy application, the Tenant acknowledged the economic rent amount, if he was no longer eligible for the rent subsidy.

I find that I have no authority to review the Landlord's decision that the Tenant no longer qualifies for subsidized rent. As the Landlord has determined that the Tenant no longer qualifies for subsidized rent, I find that the Tenant would be required to pay the economic rent amount which was reflected in the subsidy application signed on March 15, 2019 in the amount of \$1,177.00.

I find that there is no reference to an agreement made between the parties that the rent would increase to \$1,530.00 per month. I therefore find that the Tenant was required to pay rent in the amount of \$1,177.00 since February 1, 2020 rather than \$1,530.00 which had been requested by the Landlord and paid by the Tenant since February 1, 2020. This represents an overpayment of rent in the amount of \$353.00 each month.

I note the date of the last hearing was April 4, 2023 during which rent up until and including April had been paid. I am not able to confirm that rent has been paid for May 2023. As such, I am only able to award compensation to the Tenant from February 2020 to April 2023 ($\$353.00 \times 27 \text{ months} = \mathbf{\$8,331.00}$). Having been successful with their Application, I find that the Tenant is entitled to the return of the **\$100.00** filing fee. I decline to award the Tenant with the second filing fee as I find that the second Tenant's Application was not necessary given the provisions found in Section 4.2 in the Rules of Procedure. I find that the Tenant is entitled to compensation and has been awarded a monetary order in the amount of \$8,431.00 pursuant to Section 67 and 72 of the Act.

If the Tenant has paid rent to the Landlord in the amount of \$1,530.00 for May 2023, I find that the Tenant is entitled to compensation for overpayment of rent in the amount of \$353.00 which can be deducted from one (1) future rent payment.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings contrary to section 77(1)(d) of the Act, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Conclusion

The Tenants' Application was successful. The parties had agreed to economic rent for the rental unit being \$1,177.00. Therefore, the Tenant has been overpaying their rent in the amount of \$353.00 each month since February 1, 2020. The Tenant is provided with a monetary order in the amount of \$8,431.00. If the Tenant has paid rent in the amount of \$1,530.00 for May 2023 the Tenant is entitled to compensation in the amount of \$353.00 which may be deducted from (1) future rent payment.

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: May 25, 2023

Residential Tenancy Branch