Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, OPT, O

Introduction

A hearing took place on June 1, 2011, without notice to the landlord, and a Dispute Resolution Officer (DRO) granted an interim order to the tenant under section 56(6) of the Act. The interim order provides that the Act applies to the applicant's rental unit and that the interim order would remain in effect until jurisdiction is determined by way of a hearing with notice to the landlord. A participatory hearing was scheduled for June 23, 2011 and a Notice of Hearing was provided to the applicant with instructions to serve it upon the respondent along with a copy of the interim order.

At the participatory hearing of June 23, 2011 both parties appeared. Both parties were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Does the Act apply to the applicant's occupation of room in a hotel and do I have jurisdiction to resolve this dispute?
2. If the Act applies, has the landlord imposed an additional rent increase upon the tenant in a manner that does not comply with the Act?
3. If the Act applies, is it necessary to issue orders for compliance against the landlord?

Background and Evidence

During the hearing, the parties provided the following undisputed testimony. The applicant resides in a hotel room equipped with a kitchenette and two or three king size beds (herein referred to as the room). The applicant paid a $442.50 security deposit and began residing in the room with her three children on October 29 or 30, 2010. The applicant pays a monthly rate of $946.00 included taxes. The applicant signed documents entitled "Monthly Rental Agreement" and "Hotel Monthly Guest Policies" for the first month of occupancy. The parties signed an "Intent to Rent" document and the Ministry sends the cheques for the monthly rent to the respondent every month.

It was also undisputed that on May 20, 2011 the respondent issued a letter advising "guests" that "rent for the unit you occupy will be increased by $200.00 per month, effective on your next renewal date" and "all other conditions on your monthly agreement will continue to remain in effect." The respondent also issued a letter dated May 31/June 1, 2011 notifying guests that the $200.00 monthly increase was effective June 1, 2011 and payable June 1, 2011 which results in a prorated increase of $146.00 for June 1 to June 22, 2011.

The applicant provided the following information and statements during the hearing:

- The applicant is looking for alternative accommodation for her family but has had a difficult time finding suitable affordable accommodation;
- The hotel prepared and produced its own Intent to Rent form that she took to social services in order to have the monthly payment sent directly to the respondent;
- The applicant is entitled to linen and towel service but the tenant uses her own or launders the items herself;
- The applicant does not recall any discussion about a limited duration or term of tenancy and was of the belief she could reside in the room as long as necessary to find alternative accommodation;
- The applicant was not informed that the monthly payment would increase due to seasonal or summer rates when she entered into the agreement with the respondent;
- The applicant does not receive receipts or invoices for her monthly payment; and,
- The applicant does not recall signing any documents other than those in October 2010.

The respondent provided a written submission in response to this application. Below I have summarized the respondent's statements made during the hearing.

- The applicant occupies a room that is set at a monthly rate of $895.00 plus taxes;
- The monthly payment due date coincides with the date occupancy commenced;
- The first term of tenancy was for October 29, 2010 to November 29, 2010 and renewed monthly thereafter;
- The respondent understood the applicant would occupy the room on a temporary basis as four people in one room would not suggest permanent accommodation;

- The respondent was not aware of discussions with the applicant about seasonal or summer rates when occupancy first commenced;
- The room is furnished in a typical hotel style and quality of furnishings;
- The room is located in a hotel on a parcel of land zoned for hotel use and includes a lobby with front desk staff, security and guest services;
- Guests are provided maid service, including linen changes, on a weekly basis for guests staying monthly; and,
- Telephones are provided to the rooms which are linked to other rooms and the front desk.

The respondent submitted that the Hotel Keepers Act applies to the agreement between the parties and the applicant's occupation of the room. By signing the terms and conditions document, the applicant has agreed that the monthly tenancy is operated under the "Innkeepers and Hotel Act" and that the living accommodation is occupied as vacation or travel occupation; and; the living accommodation is provided for emergency shelter or transitional housing.

The respondent submitted that the room does not meet the definition of "living accommodation" as occupation of the room is not for a permanent primary residence and referred to *Steeves v. Oak Bay Marina Ltd.* 2008 BCSC 1371 ("Steeves") and *Lang v. British Columbia* 2008 BCSC 1707 ("Lang") in support of this position.

Alternatively, the respondent submitted that the Act specifically excludes vacation and transitional housing and the applicant's occupation is temporary or transitional in nature while she seeks more suitable accommodation.

Evidence submitted by the respondent prior to the hearing included a copy of the respondent's business license, a copy of the zoning requirements, glossary of terms produced by the City and Mayor's Task Force, as well as copies of the *Steeves* and *Lang* cases.

At the conclusion of the participatory hearing I instructed the respondent to provide me and the applicant with copies of all of the monthly agreements and terms and conditions documents signed by the applicant, invoices showing collection of tax on monthly rate, the Intent to Rent form used by the respondent.

The following day the respondent provided a copy of its "Registration" form with an explanation that this form is used in place of the Intent to Rent form in order to obtain

monthly payments and a security deposit from the Ministry. The respondent also provided copies of:

1. a Registration signed by the applicant indicating an arrival date of October 29, 2010 and departure date of November 29, 2010 and a deposit of $422.50;

2. a "Monthly Rental Agreement" signed by the applicant indicating an arrival date of October 30, 2010 and departure date of December 1, 2010 and monthly payment of $946.00 and security deposit of $422.50;

3. a "Hotel Monthly Guest Policies" document signed by the applicant on an unspecified date;

4. a Registration form indicating an arrival date of February 29, 2011 and a departure date of March 29, 2011 signed by the applicant with handwritten notes indicating there are "3 kids" and the monthly rate is $946.40 and $895.00.

In submitting the requested documentation the respondent confirmed that these documents were left for the applicant at the front desk as agreed upon during the teleconference call hearing. I accepted the additional evidence and considered it in making this decision.

Analysis

Upon consideration of all of the evidence and submissions provided to me I accept that the applicant occupies a room in a building that is zoned, equipped and furnished for use as a hotel. Accordingly, I proceed to consider whether the applicant's occupation of a room in the hotel falls under the Act.

Section 2 of the Act provides for what the Act applies to. It states:

> **2** (1) Despite any other enactment but subject to section 4 *[what this Act does not apply to]*, this Act applies to tenancy agreements, rental units and other residential property.

The Act defines a tenancy agreement as follows:

> **"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 4 of the Act provides for living accommodation that is specifically excluded from the Act. Included in section 4 is

> (e) living accommodation occupied as vacation or travel accommodation,
>
> (f) living accommodation provided for emergency shelter or transitional housing,

Residential Tenancy Guidelines are provided as a statement of the policy intent of the legislation, and have been developed in the context of the common law and the rules of statutory interpretation. Residential Tenancy Guideline 27: *Jurisdiction* provides, in part, the following statements:

> **1. EXCLUDED JURISDICTION**
> **a. Generally**
> The Residential Tenancy Act1 provides that the Act applies to tenancy agreements, rental units and other residential property. The definition of tenancy agreement in the Residential Tenancy Act provides that the Act applies to a license to occupy. Section 4 of the Act contains a list of accommodation and agreements to which the Act does not apply. The RTB will therefore decline jurisdiction, and refuse to hear the dispute, if the accommodation or agreement is listed in section 4.
>
> The Manufactured Home Park Tenancy Act does not include a license to occupy a manufactured home site in the definition of a tenancy agreement. See Guideline 11 for information regarding a license to occupy as distinct from a tenancy agreement.
>
> **b. Hotel Tenants**
> Occupancy of a hotel is a license and if occupied pursuant to a tenancy agreement, the Residential Tenancy Act assumes jurisdiction and confers power

upon the RTB over certain hotels and hotel tenants. The RTB will therefore hear the dispute if the tenant is a hotel tenant under a tenancy agreement.

The Act would not apply to living accommodation owned or operated by an educational institution and provided to students or employees of the institution because they would be excluded by section 4. In addition, a hotel is not a facility in which the owner of that accommodation shares kitchen or bathroom facilities because they are also excluded from the Residential Tenancy Act by section 4.

So, for example, if the facility is operated by a university and provided to students of the university, the tenant who is a student of that university may otherwise meet the requirements of the Act, but the RTB will likely decline jurisdiction and refuse to hear the dispute. This is because the relationship between the parties has been excluded by section 4. On the other hand, rental accommodation operated by the university but not provided to students or employees of the university would be included in the Act.

On the other hand, if the tenant resides in shared accommodation, which is a license to occupy, the RTB will assume jurisdiction and hear the dispute if the tenant satisfies the requirements of section 2.

Section 29 of the Act provides for the landlord's right to enter a rental unit. Section 29 provides that a landlord may enter a rental unit where:

> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

I find the Act contemplates and includes living accommodation located in a hotel pursuant to the inclusion of license to occupy in the definition of tenancy agreement and the provision for a landlord to enter the unit for housekeeping services. Thus, the location of a room in a hotel is insufficient in itself to find that the Act does not apply.

The definition of tenancy agreement provides that an agreement or license to occupy pertains to a rental unit. The definition of "rental unit" is provided in the Act and means "living accommodation rented or intended to be rented to a tenant". The phrase "living accommodation" is not defined by the Act. The respondent submitted that the phrase "living accommodation" means permanent primary residence and that this is supported by the court cases *Steeves* and *Lang*.

I have read and considered the respondents position and the cases that were provided to me. *Steeves* involved a manufactured home park and a dispute under the Manufactured Home Park Tenancy Act. I find that I cannot accept the respondent's position entirely that paragraph 107 of *Steeves* could easily be rewritten to substitute "hotel" for "campground" and Residential Tenancy Act (RTA) for MHPTA. I find that the MHPTA and the *Steeves* case is distinct from the matter before me in that the MHPTA does not include a "license to occupy" in the definition of tenancy agreement. Nor does the MHPTA specifically exclude sites used for vacation, travel or transitional use from the application of the Act as the RTA does by way of section 4. Thus, in *Steeves*, it was necessary to distinguish use of sites for vacation, travel or short-term stays by way of the meaning of "living accommodation" whereas the RTA provides a mechanism to exclude such accommodation from the Act by way of specifically excluding them in section 4.

Although I do not accept the respondent's above-described submission entirely I have considered whether the applicant's use of the room could be reasonably considered permanent and primary. I have considered the following facts in concluding the room can be considered a permanent and primary residence.

- The applicant uses the room as her primary residence and she has no other residence.
- The applicant and her children have occupied the room as their primary residence for over eight months and they are capable of sleeping, cooking, using the bathroom, and entertaining themselves with television and telephone service in the room for an indefinite period of time.
- The applicant and respondent completed and submitted documentation in order for the respondent to receive automatic monthly payments from the Ministry.
- Despite residing in the room for over eight months, only two monthly agreements were signed by the applicant with the remainder of month's automatically renewed for another month.

Having been satisfied that use of the room by the applicant can reasonably be considered the permanent primary residence of the applicant I find the room meets the definition of living accommodation.

The respondent also submitted that the room and the agreement with the applicant does not fall under the Act because it is transitional housing. The Act does not define "transitional housing".

The respondent provided two definitions of “transitional housing” as provided in the glossary of terms used by the City of Victoria, in which the subject property is located and The Mayor’s Task Force on Breaking the Cycle of Mental Illness, Additions and Homelessness. The glossaries provide the following meanings of transitional housing:

> *Housing from 30 days to two or three years that includes the provision of support serves, on or off site, to help people move towards independence and self-sufficiency. Transitional housing is often called second-stage housing, and includes housing for women fleeing abuse.*
>
> and,
>
> *Temporary housing sites to help bridge homeless residents from the street/shelter to permanent housing. Typically, tenants can remain in transitional housing for up to two or three years.*

In the absence of a defined meaning of the “transitional housing” in the Act or regulations I find it more appropriate to refer to the ordinary meaning of the words than those provided in a glossary of terms provided for use in a specific publication or for a specific purposes. I was not provided copies of the specific publication for which the glossaries were created and the context in which the phrases are used is unclear.

The ordinary meaning of the word “transition” includes:

> “a passing from one condition, form, state, activity, place, etc.”
>
> [Webster’s New World Dictionary: Third College Edition]

The definition of “passing” includes:

> “going by, beyond, past over, or through” and “lasting only a short time; short-lived; fleeting; momentary.”
>
> [Webster’s New World Dictionary: Third College Edition]

Applying the inclusive principal of statutory interpretation I refer to the use of the term “emergency shelter” along with “transitional housing” in determining the intended meaning of transitional housing. I find that the exclusion of emergency shelters and transitional housing from the application of the Act refers to accommodation that is of a

temporary nature designed to house individuals or families moving from one place to another, often in emergency situations. I find this determination consistent with the definition of transition and passing, as provided above.

To exclude this tenancy from the application of the Act because the applicant is using the room while she seeks other accommodation or because she has three children living with her is not sufficient for me to find this is transitional housing. For me to make this finding would call into question applicability of the Act for many other tenancies in the Province and I find that was not likely the intention of the legislature. Two common example of tenancies that are often viewed as "temporary" involve students renting units while they go to school for the term or tenants living in a rental unit while they save money and look for a home to purchase. These above-described scenarios are common and often result in short term tenancies for a specific purpose but the personal desires and circumstances of the tenant does not dictate whether the Act applies. Therefore, I reject the respondent's position that the living accommodation is transitional based upon the applicant personal circumstances.

Rather, I have considered that the applicant's use of the room has been over eight months in duration and could potentially go on indefinitely; thus, I find this living accommodation is not transitional housing.

Finally, the respondent pointed to the fact the applicant initialed the terms of the agreement that stipulate the use of the room is under the "Innkeepers and Hotel Act" (sic) and is vacation or travel accommodation, and is emergency shelter or transitional housing. It would appear that above phrases are taken from section 4 of the Residential Tenancy Act and are included in the contract in order to avoid the application of the Act. Regardless of the respondent's intention behind inclusion of these terms in the contract, signing the agreement and agreeing to these terms is of no consequence to the tenant as section 5 of the Act provides that a party cannot avoid the Act. Section 5 provides:

> **5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In light of all of the above findings, I am satisfied that there is a tenancy agreement between the parties and the living accommodation is not excluded from the Act by way of section 4. Accordingly, I find I have jurisdiction to make any finding or Order necessary to fulfill the provisions contained in the Act.

Since I have found the Act applies, the landlord's ability to increase the rent is limited to an increase permissible by the Act. The Act provides that any rent increase must be given by serving a Notice of Rent Increase. The Act further limits the amount of the rent increase and the timing required by the Act. I find that the letters issued by the landlord at the end of May 2011 do not constitute a Notice of Rent Increase and do not legally increase the rent payable by the tenant. Therefore, the tenant's monthly rent does not increase.

In addition to my findings above, I accept the landlord's testimony that the monthly rent is calculated as $895.00 plus tax. Since tax is not payable on residential tenancies, **the monthly rent is set at $895.00 per month and the landlord is ORDERED to sign a new Intent to Rent form indicating the monthly rent is $895.00 per month. The tenant is ORDERED to submit the new Intent to Rent form to the Ministry.**

The tenant is also entitled to recover the taxes paid on the monthly since the beginning of the tenancy. I authorize the tenant to withhold $459.00 ($946.00 – 895.00 x 9 months) from a subsequent month's rent. If rent payable at the end of July 2011 or subsequent months is paid before a new Intent to Rent form is signed and processed, the tenant is further entitled to recover any amount paid in excess of $895.00.

Conclusion

I have found that the room occupied by the applicant is living accommodation to which the Act applies and I have jurisdiction to resolve this dispute.

I have found that the respondent has attempted to impose a rent increase that does not comply with the Act and the rent increase is of no effect. The landlord is at liberty to increase the rent as provided under the Act.

I have found that the respondent has included tax in the monthly payment and I have set the monthly rent at $895.00. I have ORDERED the landlord to sign a new Intent to Rent for to reflect a monthly rent of $895.00 and the tenant is ORDERED to submit the Intent to Rent form to the Ministry for processing.

I have found that the applicant is entitled to recover the taxes paid since the commencement of the tenancy and the applicant may withhold the overpaid portion by deducting it from a subsequent month's rent. I calculate that the applicant has overpaid $459.00 up to and including the payment made at the end of June 2011. If rent payable at the end of July 2011 or subsequent months is paid before a new Intent to Rent form

is signed and processed, the tenant is further entitled to recover any amount paid in excess of $895.00.

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: July 15, 2011.

Residential Tenancy Branch