Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC MNSD FF
DRI CNR MNDC OLC RP PSF FF

Preliminary Issues

When each participant was checking into this hearing the Tenant clarified his surname and indicated that the previous owner had written his name incorrectly on the original tenancy agreement. It was noted that the incorrect surname for the Tenant was listed on the Landlord's Application for Dispute Resolution.

After a brief review of the remaining documents the Landlord requested that the Tenant's surname be amended to show the correct name on the Application for Dispute Resolution. The Tenant stated that he was in agreement with the amendment request. Accordingly, the style of cause for the Landlord's Application for Dispute Resolution has been amended to include the Tenant's correct surname, pursuant to section *64 (3)(c)* of the *Residential Tenancy Act,* (herein after referred to as the Act).

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on April 24, 2014 seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on April 7, 2014 to dispute an additional rent increase; to cancel a Notice to end tenancy for unpaid rent; to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; Orders to have the Landlord comply with the Act, regulation or tenancy agreement, make repairs to the unit, site or property, provide services or facilities required by law, and to recover the cost of the filing fee from the Landlord for his application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice issued April 7, 2014 be upheld or set aside?
2. If upheld, is the Landlord entitled to an Order of Possession?
3. Has the Landlord proven entitlement to a Monetary Order?
4. Should the 2012 and 2013 rent increases be upheld or set aside?
5. Has the Tenant filed his application for monetary compensation within the required time frame?

Background and Evidence

The Tenant submitted a volume of documentary evidence consisting of eight sections of documents in addition to his four page typed details of dispute and the 10 Day Notice. The Landlord submitted two packages of documentary evidence totaling 57 pages of documents (twelve plus forty-five pages respectively).

It was undisputed that the Tenant entered into a written tenancy agreement with the previous owner for a one year fixed term tenancy that commenced on July 1, 2010. The tenancy agreement stipulates that the Tenant was required to pay rent of $825.00 in advance of the first of each month and on June 28, 2010 the Tenant paid $412.50 as the security deposit. The current Landlord purchased the property and took over management as of May 10, 2011.

The Landlord testified that he recently became regional manager and has been responsible for managing the Tenant's file since December 2013. The Landlord stated that the Tenant has refused to pay his full rent amount, after the rent increases in 2012 and 2013, and he continues to only pay the original rent amount of $825.00.

Upon review of the Landlord's evidence it was undisputed that the Tenant had been served two notices of rent increase. One was issued July 25, 2012 for a rent increase of $35.48 (4.3 %) raising the rent to $860.48 ($825.00 + $35.48) effective November 1,

2012. The second Notice was issued July 20, 2013 for a rent increase of $32.70 (3.8 %) raising the rent to $893.18 ($860.48 + $32.70) effective November 1, 2013.

The Landlord stated that after some conversations with the Tenant about having to pay the increased amount of rent he served the Tenant a letter informing him of the requirement to pay the outstanding balance owing. A few days later the resident manager served the Tenant with the 10 Day Notice for the $895.34 unpaid rent on April 7, 2014. The Tenant paid $825.00 towards the May 2014 rent, (the original rent amount) as he has done in the past. Therefore, the Landlord is seeking to end this tenancy and obtain an Order of Possession.

The Tenant testified that he is of the opinion that the rent increases are not valid for several reasons. First, he believes the previous owner convinced him to sign the tenancy agreement for $825.00 rent under fraudulent pretences. Specifically, he had a verbal agreement with the previous owner's manager that his rent would be equal to the lowest rent being collected for a two bedroom. He found out later, in 2011 after the new owners began to manage the property, that someone else was paying lower rent for a two bedroom.

Secondly, the Tenant said was told by the current manager that his tenancy agreement continues on a year to year, or annual basis, not on a month to month basis. He stated he is of the opinion that a rent increase can only be effective on July 1st of each year, which was the start date of his original tenancy agreement. He stated that means that a notice of a rent increase must be served and received no later than March 31st, because the *Residential Tenancy Act* stipulates it must be served three months prior to the effective date.

Thirdly, he has read other decisions on the internet about tenants who over hold after the end of their fixed term and their tenancy continues annually.

The Tenant's fourth argument indicated that the second rent increase amount can only be considered effective if the first rent increase is bound to be legal and binding. The Tenant argued that the Landlord is estopped from enforcing the rent increases because they have failed to properly enforce them since 2012. He then argued that they have continued to accept each rent cheque on which he has written statements such as agreed overpayment of rent, payment in full, or paid under protest; and they have never disputed his allegations that the original rent amount was obtained by fraud.

The Tenant stated that he is of the opinion that all agreements, verbal or written, rents or receivables from the previous owners transfer to the new owners under the *Residential Tenancy Law.* The Tenant indicated that he had not filed a previous application to dispute the rent increases because he was in negotiations with the building manager.

Upon review of the remainder of the Tenant's claim, it was undisputed that there was a problem with the heating system in some parts of the building between the period of

December 2011 and towards the end of February 2012. I informed both parties that I would review the Tenant's written submissions to determine if I would hear matters pertaining to his claim for $20,000.00 for injury and aggravated damages relating to the heating issue which occurred between 2011 and February 2012. If the claim met the requirements to move forward and heard then the parties would be reconvened at a future date to present their evidence in response to that claim.

The Tenant submitted testimony regarding his request for Orders to have the Landlord comply with the Act, regulation, and tenancy agreement, make repairs to the unit, site or property, and provide services required by law. The Tenant stated that these requests related to his need to ensure he has properly functioning heat. He indicated that the heat had been working intermittently lately. The Tenant stated that it is currently turned back on and appears to be working.

In closing the Landlord pointed to the Tenant's tenancy agreement section 4C which indicates that the tenancy continues on a month to month basis at the end of the fixed term, if another fixed term agreement is not entered into. He then stated that the Notices of Rent Increase were issued in accordance with the Act and because the Tenant refuses to pay the rent increases the tenancy should end based on the 10 Day Notice that was issued April 7, 2014. The Tenant was made aware of their request for the past due rent in his letter that was served to the Tenant a few days before the 10 Day Notice was issued.

The Tenant argued that the Landlord had been estopped as they failed to take action when he first refused to pay the rent increase. The Tenant emphasized that his rent was obtained by fraud by the previous property manager based on their verbal agreement and his tenancy is based on a year to year basis based on his verbal discussions with the current resident manager.

Analysis

After careful consideration of the aforementioned, the evidence, and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Tenant's Application

A. Dispute an Additional Rent Increase

The evidence supports the Landlord served two Notices of Rent Increase which were to be effective November 1, 2012 and November 1, 2013 consecutively.

The Tenant disputed both Notices of Rent Increase on the grounds that they were invalid due to: (1) a verbal agreement he had made with a previous owner about his rent being equal to the lowest rent and (2) that his tenancy agreement is renewed year to year not month to month based on a verbal agreement with the previous and current managers and the notices must be served in a manner that they would take effect no sooner than July 1st the annual renewal date of his tenancy. The Tenant further argued that the Landlord is estopped from enforcing the rent increases as the Landlord did not take action to enforce the rent increases for 19 months after the issuance of the first Notice.

(1) On June 23, 2010, the previous Landlord and Tenant entered into a written fixed term tenancy agreement which stipulates as follows:

> ***4. RENTAL PERIOD AND TERMS OF TENANCY***
> *The tenancy created by this Agreement STARTS ON July 1, 2010*
> *X* ***B.*** *and is for a fixed term ending on the June 30 day of _____ 2010 [sic]*
> *X* ***C.*** *At the end of this time the tenancy will continue on a* ***month to month basis****, or another fixed length of time, unless the tenant gives written notice to end the tenancy at least one clear month before the end of the term [my bolding added]*
>
> . ***6 RENT AND FEES***
> *Rent $825.00*
> *TOTAL RENT AND FEES $825.00*

Section 91 of the Act provides that the common law applies to landlords and tenants unless modified or varied under the Act. Under the Parol Evidence Rule of contract law, where the language of a written contract is clear and unambiguous, then no extrinsic parol evidence (written or oral) may be admitted to alter, vary or interpret in any way the words that are written in the agreement. When there is no ambiguity in a written contract it must be given its literal meaning. Words must be given their plain, ordinary meaning unless to do so would result in an absurdity.

The Parol Evidence Rule prevents a party to a written contract from presenting extrinsic evidence that contradicts or adds to the written terms of the contract that appear to be whole. The rationale for this rule is that since the contracting parties have reduced their agreement to a final written agreement, extrinsic evidence should not be considered when interpreting the written terms, as the parties had decided to ultimately leave them out of the contract. In other words, one may not use evidence made orally or prior to the written contract to contradict the writing.

Based on the above, I find the Tenant's testimony about an alleged verbal agreement with the previous and existing managers about the amount of rent he should have to pay is unenforceable, as the tenancy agreement was set to writing. Accordingly, I find that as at the start of this tenancy the Tenant was required to pay rent of $825.00 per month, as per the tenancy agreement.

(2) After careful consideration of the foregoing, I find the Tenant's argument that he had a verbal understanding and/or agreement that his tenancy agreement renews annually on July 1st to be parol evidence and unenforceable. Accordingly, as per the written tenancy agreement #1(c) this tenancy continued on a month to month basis after June 30, 2011, the end of the initial fixed term.

Section 42 of the *Residential Tenancy Act* stipulates that (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

> (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
>
> (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

For clarity a landlord may serve notice of a rent increase during the course of a tenancy as long as the increase meets the legislated amount of increase and does not become effective during the first 12 months of the tenancy "or" prior to 12 months since the last rent increase.

(3) The Tenant argued the defence of estoppel with respect to the rent increases because the Landlord failed to take action sooner. He initially refused to pay the increase back in November 1, 2012. The Landlord continued to accept his monthly rent payments of $825.00, the original rent, and did not take action until writing a letter and issuing an eviction notice in April 2014.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

Section 7 of the *Residential Tenancy Act* stipulates that a party claiming a loss resulting from the other party's non-compliance with the Act, regulation or tenancy agreement must do whatever is reasonable to minimize the loss.

Based on the above, I accept the Tenant's argument that the Landlord is estopped from enforcing the November 1, 2012 and November 1, 2013, rent increases, as they failed to take action to enforce the increases, as required under section 7 of the Act. That being said, the Landlord is at liberty to issue a new Notice of Rent Increase based on the current monthly rent of $825.00, in accordance with section 42 of the Act.

B. Request to Cancel 10 Day Notice to End Tenancy for Unpaid Rent

As per the Landlord's submission the Tenant's rent of $825.00 per month is paid in full and the outstanding amounts are comprised of rent increase amount. Accordingly, as I have found the Notices of Rent Increase to be unenforceable, the 10 Day Notice issued April 7, 2014, to be invalid, and of no force or effect.

C. Monetary Compensation for Damage or Loss of $20,000.00

The Tenant seeks compensation of $20,000.00 for: loss; serious injury to Tenant's health; pain; medical costs; and aggravated damages, resulting from inadequate heat during the period of December 2011 to February 2012.

In this case, there are two statutes which provide limits within which a claim must be filed: the *Limitation Act*, and the *Residential Tenancy Act*. The interaction of these statutes means that, even if a claim is filed within the two years permitted under the *Residential Tenancy Act*, the Limitation Act may prevent it from being heard if it relates to something that occurred more than two years before the claim was filed.

Section 60 of the *Residential Tenancy Act* stipulates the time period in which an application for dispute must be made as follows:

> (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made *within 2 years* of the date that the tenancy to which the matter relates ends or is assigned.
>
> (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
>
> (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded [emphasis added].

The *Residential Tenancy Branch* Policy Guideline # 16 outlines the time limits of when certain specified claims must be filed, as stipulated in the *Limitation Act.* If a claim is not filed within the specified time limit the right to make those claims will be ended.

Section 25(4) of the Limitation Act of BC stipulates that the calculation of time expressed as clear days, weeks, months or *years,* or as "at least" or "not less than" a number of days, weeks, months or years, the first and *last days must be excluded*.

The *Limitation Act* stipulates that the right to bring an action for damages in respect of injury to person or property, including economic loss arising from the injury, ends at two years from the date on which the right arose, whether based on contract, tort or statutory duty.

The Tenant's claim for loss involving: serious injury to Tenant's health; pain; medical costs; and aggravated damages, allegedly stemming from heating problems in the building in December 2011 to February 2012, was required to be filed no later than

February 28, 2014. His claim was not filed until April 07, 2014; therefore, I find his monetary claim was not brought forth within the statutory time period, as noted above. Accordingly, I hereby dismiss the Tenant's monetary claim, without leave to reapply.

D. Orders to have the Landlord Comply comply with the Act, regulation, and tenancy agreement; make repairs to the unit, site or property; and provide services required by law.

After consideration of the Tenants oral testimony that the heat has been working intermittently and is now working fine, I find there to be insufficient evidence to support issuing orders to the Landlord at this time. If the Tenant continues to experience problems with his heat he is required to put his requests for repairs in writing to the Landlord so the Landlord can enact the repairs in accordance with section 32 of the Act.

E. Recover the Filing Fee

The Tenant has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **$50.00**.

Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on April 7, 2014 and filed an application to dispute the Notice on the same day. As noted above, I found the 10 Day Notice to be unenforceable and is of no force or effect. Accordingly, I hereby dismiss the Landlord's application in its entirety, without leave to reapply.

The Landlord has not been successful with their application; therefore, I decline to award recovery of their filing fee.

Conclusion

The Notice of Rent Increase issued July 25, 2012, to be effective November 1, 2012, is hereby cancelled and is of no force or effect.

The Notice of Rent Increase issued July 20, 2013, to be effective November 1, 2013, is hereby cancelled and is of no force or effect.

The 10 Day Notice issued April 7, 2014, is hereby cancelled and is of no force or effect.

The Tenant may deduct the one time award of $50.00 as full recovery of the monetary award for recovery of his filing fee.

I HEREBY DISMISS the Landlord's application, 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: June 2, 2014

Residential Tenancy Branch