Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding LANDERS LODGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for an Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord, the Tenant, MA, and her Support, CA, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on December 7, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on December 12, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served their evidence by email on April 7, 2023. The Tenants confirmed receipt of the Landlord's evidence. I find that the Landlord's evidence was served on the

Tenants on April 10, 2023 pursuant to Sections 43(1) and 44 of the *Residential Tenancy Regulation* (the "Regulation").

Preliminary Matter

Jurisdiction

CA stated that the Act is meant to cover all rentals in the Province of British Columbia. Because of this, then how the residential property raises its rent is covered by the Act, unless there is a provision that allows a landlord to raise the rent above and beyond the set guidelines.

The lodge was advertised as an Independent Living Facility, and MA has been a resident since September 2014. The lodge offers three meals per day, laundry services, and the room is cleaned once per week. The lodge is not a health facility.

CA contacted the *Community Care and Assisted Living Act* people, and she was told that the lodge does not fall under the *Community Care and Assisted Living Act*. Because the lodge is not listed under their registry, it is not within their jurisdiction.

In earlier days, MA just received help with her medications, now the health authority assists with MA's bathing, dressing, and personal hygiene. MA's family assists with setting up doctor appointments and provides transportation to those appointments.

The Landlord testified that the lodge building provides purpose built wide hallways for wheelchairs and walkers. There are benches in bathrooms so residents can receive bathing care. The residents can be fitted with 24-hour emergency response system necklaces or wristbands in case the resident needs assistance.

The building is zoned as CD-4 – Comprehensive Development Zone – 4. The purpose is described as:

Purpose

42.1 The purpose of the CD-4 Zone is to accommodate the *development* of *assisted living housing* on small parcels designated High Density Residential in the *Official Community Plan*. New *development* proposals require a Development Permit in accordance with the Residential Development Permit Area Guidelines of the *Official Community Plan*, and shall comply with the provisions of the British Columbia Building and Fire Codes, and any other applicable legislation.

They have resident shared dining facilities with a commercial kitchen which is regulated by the health authority and WorkSafeBC. The lodge provides entertainment programs for the residents if they chose to participate.

The Landlord says the lodge is not regulated by the *Community Care and Assisted Living Act*, the *Continuing Care Act*, the *Hospital Act*, or the *Mental Health Act*.

The Landlord testified that the engineer and architect design state the lodge is for assisted living and/or supportive housing. The 2006 building permit was issued for an assisted living space. BC assessment states the lodge is Seniors Supportive Living.

Residential Tenancy Policy Guideline #46-Emergency Shelters, Transitional Housing, Supportive Housing ("PG#46") is intended to help parties understand issues that are likely to be relevant in their application. PG#46 discusses differences between emergency shelter, transitional housing, and supportive housing. The Act applies to Supportive Housing. It states:

> ***D. SUPPORTIVE HOUSING***
>
> *Supportive housing is long-term or permanent living accommodation for individuals who need support services to live independently. The Residential Tenancy Act applies to supportive housing, unlike emergency shelters and transitional housing which are excluded from the Act.*
>
> *Under section 5 of the Act, landlords and tenants cannot avoid or contract out of the Act or regulations, so any policies put in place by supportive housing providers must be consistent with the Act and regulations.*

The Tenant has resided in her rental unit for a long time, since 2014. This accommodation is her permanent accommodations, and she utilizes the support services provided by the lodge to live independently. I find the Act has jurisdiction in this matter and I can decide this claim.

Issue to be Decided

Are the Tenants entitled to an Order for the Landlord to comply with the Act, Regulation, and tenancy agreement?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants confirmed that this periodic tenancy began on September 1, 2014. The Landlord stated that him and his wife took over the business two years ago. The Tenant was already residing in the residential property. The Landlord claims that monthly rent is $2,300.00 payable on the first day of each month, while the Tenants claim the monthly rent is $1,848.60.

On November 13, 2022, the Landlord issued a letter to the Tenant stating because of the increased cost of doing business, “the all-inclusive monthly rent” starting February 1, 2023 will be $2,300.00.

Both parties testified that the rental unit has weekly housekeeping, laundry services, and three meals are provided to the Tenant. The Tenant’s rental unit has a bedroom and sitting area, and a 2-piece washroom.

The Landlord went into a lengthy, and detailed description of all the services the lodge provides to its residents. The Landlord said they are constantly monitored by WorkSafeBC, and they have sunk a lot of money into the lodge to maintain their services like eyewash stations, fire alarms or smoke detectors, and backflow sensors for the water lines.

CA disputes the 124%+ rent increase imposed on MA and states it is not inline with allowable rent increases governed under the Act.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. RTB Rules of Procedure 6.6 states though, in some situations the arbitrator may determine the onus of proof is on the other party.

Although this Decision will be rendered more than 30 days after the conclusion of the proceedings, 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 set out in subsection (1)(d).

Residential Tenancy Policy Guideline #9-Tenancy Agreements and Licences to Occupy defines that a tenancy agreement is 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. Under a tenancy agreement, the tenant has exclusive possession of the rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit, subject to the landlord's right to access the unit, for a term; and,
- the tenant pays a fixed amount for rent.

I find there is an oral tenancy agreement between the Landlord and the Tenant in this matter. MA pays a monthly rent to the Landlord, and she has exclusive possession of her bedroom unit, plus access to common areas where she partakes in the supportive services provided by the lodge.

Residential Tenancy Policy Guideline #37-Rent Increases is intended to help parties understand issues that are likely to be relevant when giving a notice of a rent increase. Under Section 43 of the Act, a landlord may impose a rent increase on their tenant; however, the amount of that increase is:

- calculated in accordance with the regulations ("annual rent increase")
- agreed to by the tenant in writing ("agreed rent increase")
- ordered by the director on an application in the circumstances prescribed in the regulations ("additional rent increase")

Section 42 of the Act sets out the timing requirement governed by the Act and Regulation. The Landlord can give a rent increase once every twelve months.

The Landlord must give the Tenant a completed Notice of Rent Increase form at least three months before the effective date of the rent increase. This applies to annual rent

increases, agreed rent increases and additional rent increases. The approved form must be used.

I find the Landlord improperly imposed a rent increase on the Tenant and I cancel his notice. The Landlord must abide by the rent increase provisions of the Act and the Regulation. I find the Tenant's monthly rent amount is $1,848.60, and if the Tenant has paid any amount over this since February 2023 because of the Landlord's invalid notice, Section 43(5) of the Act states, "*If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase*."

The Tenants seek an Order that the Landlord comply with the Act, Regulation and tenancy agreement and I do Order.

Conclusion

I Order the Landlord to comply with the Act and Regulation when imposing a rent increase on the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 16, 2023

Residential Tenancy Branch