Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLDEN LIFE MANAGEMENT CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to dispute a rent increase.

The Tenant and the Landlord attended the hearing and provided affirmed testimony. Service of the documents was confirmed at the first hearing, where the issue of jurisdiction was discussed.

Both parties were provided the 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 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. Is the Tenant entitled to a monetary order due to an unlawful rent increase?

Background and Evidence

The Tenant stated that she is seeking to have the most recent rent increase modified or cancelled because it does not comply with the annual rent increase limit of 2% for 2023. The Tenant paid monthly rent in the amount of $3,090.69 up until April 1, 2023, at which point her rent was increased to $3,232.50. The Tenant has been paying the increased amount since that time. The Tenant provided a copy of the tenancy agreement and the notice of rent increase.

The Landlord argued that the Act does not apply to the parts of the tenancy agreement that deal with certain “hospitality services.” The Landlord argued that they provide certain hospitality services that do not fall under the Act, and since they do not fall under the Act, they are allowed to increase the amounts relating to those excluded services above and beyond what the annual rent increase provides for. In other words, the Landlord has imposed this rent increase by taking the parts of what is included under the Act (rent, cable etc) and increasing this by the allowable annual amount of 2%, and they have also taken the items they feel are excluded from the rent increase provisions (some hospitality services – meals etc) and increased them in line with the inflation for those items, which is beyond the 2% (but only for the excluded items). The Landlord does not feel they have imposed an illegal rent increase. The Landlord referred me to their legal written submission for their arguments.

Analysis

Does the Act apply to parts of the tenancy agreement that deal with hospitality services?

The Landlord submits that the Act does not apply to the parts of the tenancy agreement that deal with certain hospitality services.

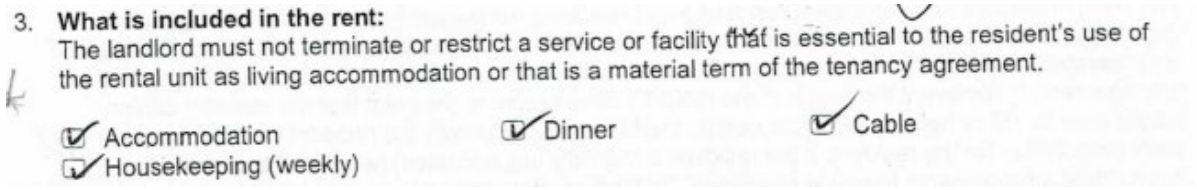
The Landlord stated that the Act lays out what is considered a service or facility, and since several of the “hospitality services” provided to residents of this building are not included in the definitions under the Act, they ought to be excluded from the Act and from my jurisdiction. The Landlord pointed to the “implied exclusion” principle of statutory interpretation, which presumes that by not mentioning a specific service or facility in the definition, the legislation intended to exclude those services. In this case, those services are food/recreational services, and emergency monitoring.

The Tenant asserts that this tenancy agreement always included her accommodation, basic housekeeping, dinner, and cable TV, as per the tenancy agreement provided into evidence. The Tenant asserts that all of this was intentionally included in her base rent and she has not signed any other agreement for additional services.

I have considered the totality of the arguments and submissions. While I accept that food services, recreational services and emergency monitoring are not explicitly included under the Act under the definition for “service or facility”, I note they are not specifically excluded either. I acknowledge that the Landlord is arguing that I should interpret this within the context of the “implied exclusion” principle of statutory

interpretation. However, I also find it important to note the principle in contract law called *contra proferentem* which provides that ambiguity in a contract is interpreted against the person who drafted and set up the terms. There is an expectation that the Landlord make these matters clear when the tenancy agreement is drafted. In this case, the Landlord drafted a tenancy agreement which, when viewed alongside their legal arguments at this hearing, is confusing and unclear.

The tenancy agreement repeatedly cites portions of the Act, and is titled *BC Residential Tenancy Agreement – Independent Living*, yet the Landlord asserts that this tenancy agreement is not governed by the *Act* for a variety of reasons. Further, I also note the Landlord specifically listed in the tenancy agreement "what is included in rent" followed by reference to not terminating or restricting a service or facility that is essential to the use of the rental unit. The tenancy agreement then goes on to list the following as items "included in rent":



3. **What is included in the rent:**
The landlord must not terminate or restrict a service or facility that is essential to the resident's use of the rental unit as living accommodation or that is a material term of the tenancy agreement.

☑ Accommodation ☑ Dinner ☑ Cable
☑ Housekeeping (weekly)

The Tenant understood all of these items to be included in her base rent. I find the Landlord ought to have separated out the specific items not included in base rent, if they were in fact separate and distinct and not included in the base rent amount noted. Since the tenancy agreement was drafted by the Landlord, and this term has the potential to negatively impact the Tenant, I rely on the principle of *contra proferentem* to interpret the tenancy agreement as including all items noted above as part of base rent.

I find all items noted in section 3 of the tenancy agreement are considered part of base rent. As such, the entire amount of base rent is governed by the rent increase provisions of the *Act* and the *Regulations*.

Has the rent increase been imposed lawfully?

Part 3 (Sections 40 through 43) of the Act and Part 4 (Sections 22 and 23) of the Regulations provide for rent increases. The Act provides that any rent increase must be accomplished by the landlord serving the tenant with a Notice of Rent Increase form and serving it to the tenant at least three months before the rent increase is to take effect. The Act also provides that the rent must not be increased by more than the

allowable “annual rent increase” unless the landlord has the tenant’s written consent or the authority of an Arbitrator pursuant to an Application for Additional Rent Increase.

There is no evidence that the Tenant provided written consent for the most recent rent increase. Nor, did the Landlord seek an Arbitrator’s order for an additional rent increase by making the applicable application.

In this case, the Tenant was provided with a notice of rent increase, dated November 29, 2022. This Notice was provided into evidence and shows that rent was $3,090.69 up until April 1, 2023, and the rent increase was for $141.81, which is 4.6%. I note the maximum allowable annual rent increase for 2023 was 2%. I find the amount of rent increase is too large and is improper.

Section 43(5) of the Act states that 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. Since the additional rent increase was non-compliant with the Act, I order the monthly rent payable by the Tenant remain at $3,090.69 until such time it is legally increased. The entire rent increase is set aside. As the Tenant has been paying $3,232.50 since April 1, 2023, I find the Tenant has overpaid rent by $141.81 per month (6 months paid as of this hearing date) and is entitled to recover those overpayments pursuant to the Act. Therefore, I order the Landlord to repay the Tenant $850.86 for the overpaid rent plus $100.00 for recovery of the filing fee paid to make this Application.

I hereby authorize the Tenant to deduct $950.86 from one future rent payment. Rent will remain at $3,090.69 until it has been lawfully increased.

Conclusion

The Tenant’s Application is granted. The Tenant may deduct $950.86 from a future installment of rent.

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: September 25, 2023

Residential Tenancy Branch