



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: DRI, MNDC, & FF

Introduction:

This hearing dealt with an application by the tenant disputing an alleged illegal rent increase and seeking damage or loss due to the landlord's breach of the *Act*. The hearing was conducted on November 21, 2008 by conference call and then adjourned to December 18, 2008 in person. Prior to the second hearing on December 18, 2008 I received a request from the landlord to summon a witness. I was not required to issue a summons under the *Act* for this witness as he did appear and was called forward as a witness by the tenant.

Issues to be Determined:

Did the landlord apply an illegal rent increase contrary to the provisions of the *Act*? Has the tenant established a monetary claim for loss or damage under the *Act* due to the landlord's alleged breach?

Background and Evidence:

The details of this tenancy have been established from the evidence presented during the hearing in the absence of a written tenancy agreement. I accept the following details as being the most accurate representation of the terms of the tenancy based on the evidence provided by the witnesses and the tenant. I accept that this tenancy began approximately 11 to 12 years ago when the tenant began living on the above named property in addition to working for the owner. The tenant worked for the owner prior to living on the property. The tenant worked initially to build the rental unit that he moved into. After this work was completed the tenant then occupied the rental unit and continued on with his employment as the caretaker or grounds keeper of the property.

The subject property is described as a having 64 acres for a farm operation dealing largely with horse boarding and training. The tenant's activities on the property involved both living accommodations and an employment contract. There was no division of the two and nothing was done in writing. Generally, the tenant was paid a monthly salary of \$700.00 with no written obligation for the number of hours worked in return for this salary. In fact, I accept the evidence before me that there was no expectation of a minimum number of hours that the tenant had to work. In addition to the employment arrangement the tenant was provided with living accommodation for which he paid \$150.00 per month. The utilities were covered by the landlord and there was no evidence that any portion of the tenant's employment hours were applied in lieu of rent. In addition the tenant was not required to keep timesheets or documentation of the work he completed. Evidence presented by the previous landlord/employer indicated that there was no need for any written contracts and no problems arose out of this informal

relationship. There did not appear to ever have been any concerns about the work the tenant completed.

The business was sold in November 2005 and the new landlords took possession of the property effective December 1, 2005. The new landlords keep the tenant on as the maintenance or grounds keeper. In the purchase agreement there was a list of tenancies as of November 21, 2005. This contract stated the following respecting the tenant's rental unit:

Lower shed, East Suite: Monthly rent \$150.00, electricity included

The purchase agreement also included a heading under section 6.4 – Termination of Employees. This required the Vendor to terminate on or before the closing of the purchase agreement the employment of all employees. There was no evidence presented before me that the tenant's employment or tenancy was terminated before the completion of the Purchase Agreement.

Section 5.8 – Tenancies in the Purchase Agreement, states that schedule "B" contains an accurate list of current tenancies including the rent charged. This section also states that there are no written tenancy agreements and that the Vender had not collected any security deposits from the listed tenants.

It is clear from the evidence presented at the hearing that the tenant's terms of employment did not sit well with the new landlords. While there was nothing in writing prior to January 2006, it is clear that tensions developed almost immediately.

The tenant presented evidence that out of his growing concern about the situation after the property was sold he had his wife write down a list of his general work duties prior to the sale of the property. This document was provided under tab 10 of the binder submitted as part of the tenant's evidence. This document is a hand written note listing general duties including cutting lawns, maintaining roads, and maintenance of farm equipment plus other general duties which appeared to include occasionally mending of fences and pens. The tenant also documented in this note his general impression of his tenancy agreement and employment contract which included the monthly rent of \$150.00 and a salary comprised of \$700.00 per month and electricity to his living accommodation.

In a follow up response to the tenant's question to the original landlord/employer, the previous landlord/employer provided a letter dated January 5, 2006 which added the following details which represented his understanding of what the terms of employment were:

- Salary of \$700.00 per month;
- The amount of rent to be paid was established 10-12 years ago at \$150.00 per month which was considered a further compensation of say \$350.00 per month; and
- The landlord/employer covered costs of all electricity associated with the suite mentioned above at an estimate average cost of \$250.00.

According to this letter the tenant's total compensation was considered to be \$1,300.00 per month. The letter also comments that, "Our agreement did not cover specific hours of work as it was understood that as long as these tasks were looked after, your hours were yours to decide. We agreed to liberal time off the premises, including vacations, and there was no question or monitoring of hours worked as long as these tasks were looked after." I note that the only evidence that suggested that the tenant's monthly rent was anything other than the \$150.00 per month was in this document after that relationship had ended.

The new landlord/employer clearly did not share this position. The tension between the tenant and the landlord stemmed from the number of hours he worked and the nature of his duties. Negotiation of new terms of employment arose out of the conflict between the landlord and the tenant around employment expectations. The tenant sought the assistance of the previous owner and a document was made dated January 31, 2006. This document was written by the previous owner and addressed to the tenant. It provided the following breakdown which is the centre of this dispute:

Value of rent:	\$900.00 per month
Cost of Electric:	\$200.00 per month
Salary:	\$700.00 per month
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Total Cost:	\$1,800.000 per month
Less: Rent Paid	\$150.00 per month

Total Amount to be "worked off": \$1,650.00 per month

"They will allow you \$15.00 per hour for this "work off" so \$1,650.00/\$15.00 per hour would equal 110 hours per month or 110 hours/ 8 hours a day = 13 days and 6 hours per month. This would look after your rent, electric and salary.

"I would suggest that for both parties, it would be best if you kept daily time sheets and then if you are requested to do additional work over the 13 days and 6 hours per month, you can either "bank" these hours and put them forward to another month, or, P has said they would pay you for these "additional" hours at the \$15.00 per hour, less the income tax, CPP and EI deductions as required."

Although this letter mentions one of the individuals who now owns the property, it was only addressed to the tenant and signed by the previous owner. Neither the tenant nor the current landlord signed this document. It was the landlord's evidence that the tenant agreed to the terms in this document, while the tenant denied in the hearing that he actually understood the terms of this document.

After this letter was issued to both the tenant and the landlord, the tenant was required to keep timesheets outlining the number of hours he worked and he was also provided a list of duties which would be posted in the barn each day. From the tenant's evidence he was expected to work a minimum of 40 hours a week. This statement is not consistent with the apparent agreement that he would be working a total of 110 hours per month.

The tenant remained an employee and tenant until his employment was ended in October 2007 and he received a one month Notice to End Tenancy due to his employment ending. The tenant vacated the rental unit effective November 15, 2007. The tenant continued to be paid \$700.00 from December 1, 2005 to the end of the employment in October 2007 and he continued to pay a monthly rent of \$150.00.

It is the tenant's contention that the landlord effectively implemented an illegal rent increase from December 1, 2005 to November 15, 2007. It is the tenant's position that he had a clear, implied tenancy agreement for the monthly rent of \$150.00 including utilities. There was also a clear employment arrangement with no defined work hours and a monthly salary of \$700.00.

According to the submissions of the tenant's representative, the new landlord wanted the tenant to work a minimum of 110 hours per month at \$15 per hour. This would imply total compensation of \$1,650.00 per month, which is partially established from the calculation that the tenant was now being charged \$1,100.00 per month rent. The tenant's representative argued that the tenant's labour paid this illegal rent increase. The tenant has sought action for his unpaid wages through the Supreme Court of British Columbia and the tenant's representative pointed out that part of the landlord's defence in that proceeding was that part of the tenant's employment compensation was the payment of rent at \$1,100.00 including utilities.

The tenant's representative argued that the implied compensation of \$1,650.00 as outlined in the letter of January 31, 2006, less the tenant's wage of \$700.00 equals a remaining sum of \$950.00 plus the tenant's rent payment of \$150.00, resulting in a rent increase to \$1,100.00. The tenant's representative argued that the dispute between the parties respecting the actual number of hours he worked is not related to this dispute and is to be determined in another jurisdiction. However, the fact that the tenant was paid the \$700.00 per month confirms that he worked at least the 110 hours per month. This minimum requirement of working hours is the largest difference between the previous employment and his current employment. The tenant's representative submitted that this highlights that the rent increased from \$150.00 per month to \$1,100.00 per month, a difference of \$950.00

The tenant's representative submitted that the rent was originally \$150.00 as set out in the sale agreement and confirmed by the evidence of the witnesses. It is an irrelevant consideration as to what the market value of the rental unit could have been. The letter of January 31, 2006 sets out the landlord's increase to the value of the tenant's rent. The tenant's representative submitted that this is what the landlord was charging the tenant. The issue is that the tenant paid an increase in rent through his salary.

The tenant's representative submitted that this change to the tenant's rent, as documented in the January 31, 2006 letter, represents a rent increase that does not comply with the *Act*. The increase was not on the proper form, did not communicate the tenant's rights to dispute the increase and did not provide the three months notice. These are all mandatory provisions required by the *Act*.

The landlord's representative argued that the situation is not as simple as described by the tenant's counsel. There was both a tenancy relationship and an employment relationship. The landlord's representative submitted that there was clear evidence that part of the tenant's employment benefits was attached to his tenancy, as demonstrated in the January 5, 2006 letter that the rent of \$150.00 represented greater compensation equaling \$350.00. The landlord's representative submitted that the real market value of the rental unit is relevant to the circumstances as the rental unit, or its rent, was part of the tenant's employment benefits.

The landlord's representative submitted that because the relationships were intertwined the benefits versus rent should be considered in the context of debits and credits. The landlord's representative submitted that very little has changed since the landlord/employer changed effective December 1, 2005. The tenant continued to be paid a salary of \$700.00 and paid rent on the unit was \$150.00. In addition, the tenant had other employment benefits such as the electricity to the rental unit and access to a company vehicle. However, after the sale the value of the rent is estimated at \$1,100.00 comprised of \$900.00 "rent" and \$200.00 electricity.

The landlord's representative stated that the dispute revolves around the number of hours the tenant had to work and did work. This created a threshold, which the landlord ultimately submits that the tenant crossed. The January 31, 2006 letter of understanding represents a transfer of understanding of the tenant's employment benefits or a modification of those benefits. The tenant agreed to this modification without further dispute. This document represents accounting of his tenancy and employment benefits; however, in terms of real dollars going in and out nothing changed. The tenant understood that the rent component of his employment benefits with the new landlord/employer was increasing.

The landlord's representative argued that the tenant agreed to these changes, partially negotiated with the assistance of the previous owner and that he had two years to say something to Residential Tenancy Branch, the Employment Standards Branch or some other means. The landlord's representative submitted that the tenant's statement that he did not understand the result of these negotiations is not credible, given that the tenant initiated the clarifications on his own. The landlord's representative submitted that the tenant has, at the very least, acquiesced to these changes.

In rebuttal, tenant's representative submitted that the landlord was aware of the tenancy and the landlord is not disputing that the "real" value of the tenant's rent was being changed in the letter of January 31, 2006. Tenant's representative submitted that this represents a loss of what is coming off of the wages earned by the tenant's employment. This is represented by a real change in the number of hours the tenant was now prescribed to work. This is a real change in the tenancy agreement as it is represented by an increase in the value of the rent.

Further the tenant's representative submitted that the tenant didn't know that he could do anything from a legal perspective. Tenant's representative stated that the tenant didn't acquiesce as suggested because the tenant was not aware of his rights and this still does not eliminate the landlord's obligation to meet the statutory requirements of the *Act* respecting rent increases.

Analysis:

This was a complex hearing during which I heard affirmed evidence from five individuals including the tenant. I have only documented and commented on evidence which I find was relevant to coming to this decision. There was significant evidence and argument presented about the terms of the tenant's employment, other benefits such as the company vehicle and the credibility of the hours submitted during the period in question. These considerations are beyond the scope of the issue before me and are dealing with employment issues which are beyond the scope of the jurisdiction under the *Act*.

However, as suggested by landlord's representative, both of these issues are closely entwined given the employment and tenancy relationship between the parties. However, the only issue for which I have jurisdiction to make a decision is respecting whether the landlord applied a rent increase without notice and beyond the schedule increase allowed at the time.

Given the lack of any written contracts defining the tenancy agreement or the conditions of employment I have had to consider evidence from the tenant and the previous owners respecting their verbal understanding of the agreements. On the basis of this evidence I accept that the tenant had occupation and possession of the above noted rental unit for the monthly rent of \$150.00 and that the landlord paid the electricity to the rental unit. I accept that the electrical supply to the rental unit was included in the rent as part of the tenancy agreement and was not an employment benefit.

I accept that the landlord had a separate employment relationship with the tenant and that none of the tenant's labour or value for labour was attached to his tenancy. While I acknowledge that the letter of January 5, 2006 from the landlord to the tenant suggests a greater value to the rent of \$150.00, I find that this was not the actual practise of the tenancy relationship. Rather, this suggestion was brought forward after that relationship had ended and was part of the parties' attempt to confirm the nature of the original oral agreements.

At the time the property was purchased, the tenant's tenancy was carried over with the land. The tenant did not receive a notice ending the tenancy and no new tenancy agreement was established. Therefore, the new landlord assumed the obligations and rights of the *Act* and the tenancy agreement continued on the same terms.

The issue, in my mind, is whether the document of January 31, 2006 represents a change to the tenancy agreement as argued by the tenant or whether it represents a change in the conditions of employment. If it is the latter, than it would be outside of my jurisdiction to determine under the *Act*.

The tenant's representative has argued that this document comprises a change to the terms of the tenancy agreement by effectively increasing the tenant's monthly rent. This rent increase is comprised of an expectation that the tenant is to "work off" an additional \$1,650.00 from his labour to pay for the rent increase.

While I acknowledge that the language of the document uses terms such as "rent" in calculating the number of hours the tenant will work and the hourly rate the tenant will be paid, I am not satisfied that this document changed the terms of the tenancy

agreement. It has been established that the tenant never paid more than the original \$150.00 per month rent as he always had.

I find that this document is, considering the overall context of the circumstances, an attempt to define and change the terms of the tenant's employment and his employment benefits. The dispute respecting the terms of the tenant's employment revolved around what work he did for the compensation of \$700.00 a month. As demonstrated by the evidence before me, the tenant had no minimum number of hours to work under the previous employer and no requirement to document or justify the quantity of his work. He was simply paid his salary on the casual basis that he was completing the work expected of him.

This arrangement was not satisfactory to the new employer/landlord and it is this conflict that initiated the dispute between the parties. I am satisfied, on the balance of probabilities that the document of January 31, 2006 was an attempt to justify and quantify the terms of the tenant's employment. As a result, the alleged increase in the value of rent was simply an accounting tool to establish the tenant's employment benefits and to clarify the terms of his employment respecting what his hourly wage would be and the minimum number of hours he was to work.

Therefore, I find that the context of this document does not represent an illegal rent increase as argued by the tenant. I am satisfied that the terms of the tenant's tenancy agreement with the landlord did not change and this dispute is solely a dispute about the tenant's terms of employment.

I am satisfied that the tenant did not suffer a loss under the terms of the tenancy agreement or the *Act*. I find that there was no illegal rent increase, but rather a change in the value of what the landlord considered the value of the tenant's employment benefits which was used to determine the terms of his employment. Any dispute in this realm is not under the jurisdiction of the *Act*.

Conclusion:

I find that the tenant has failed to establish that he suffered a monetary loss due to breach of the tenancy agreement or *Act* due to an illegal rent increase and I dismiss the tenant's application.

Dated January 27, 2009.

Dispute Resolution Officer