

DECISION

Dispute Codes DRI, CNL, OLC, RP, LRE

Introduction

This hearing was convened by way of conference call to deal with the tenant's application disputing an additional rent increase; for an order cancelling a notice to end tenancy issued for the landlord's use of the rental property; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and to suspend or set conditions on the landlord's right to enter the rental unit.

The tenant and the landlord both attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The landlord's husband also attended the hearing and gave affirmed testimony. All information and testimony provided has been reviewed and is considered in this Decision.

The rental unit is a cabin on property which also contains motel units. The landlord and her husband argue that the *Hotel Inn Keepers Act* applies, not the *Residential Tenancy Act*, but was not able to provide any sections of the *Hotel Inn Keepers Act* that substantiate that. Section 4 of the *Residential Tenancy Act* states that if the unit were rented as vacation or travel accommodation, the *Residential Tenancy Act* would not apply, but the parties agree that the tenant has resided in the cabin for almost a year and a half on a month-to-month basis.

Issue(s) to be Decided

Is the tenant's dispute of an additional rent increase justified?

Is the tenant entitled to an order cancelling a notice to end tenancy for landlord's use?

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

Background and Evidence

This month-to-month tenancy began on December 23, 2008 and the tenant still resides in the rental unit. Rent in the amount of \$650.00 per month is payable on the 23rd day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$275.00.

The tenant testified that rent was initially \$550.00 per month and was raised to \$580.00 sometime in 2009, but she does not recall the date. She received another rent increase on October 31, 2010 raising the rent to \$650.00 effective January 1, 2011.

The tenant also testified that she received a Notice of Termination, a copy of which was provided in advance of the hearing. She stated that the notice is not in the proper form, and it states that the landlord will be conducting some renovations. The tenant does not feel that she should be required to move while the renovations are being completed. She further stated that another tenant has been living in another cabin on the property for 8 years and the landlord did repair work while she remained in the rental unit.

The tenant also testified that she has been told by other people that the landlord has entered her unit while she was not at home, but has not seen the landlord actually enter the unit uninvited.

With respect to the application for an order that the landlord make repairs to the unit, site or property, the tenant states that the landlord has fixed the sink about 2 weeks ago, and she no longer requires the order.

The tenant also testified that the landlord charges her guests \$10.00 to stay overnight.

The landlord testified that they did not believe the *Residential Tenancy Act* applies because the property is a motel with 10 cabins and the landlord's 3 bedroom house. There is no written tenancy agreement, and the landlord charges all guests an extra \$10.00 per night for hot water and other expenses.

The landlord further testified that the tenant has to move out because they have to paint all walls in the cabin. The walls are greasy due to heavy smoking, requiring primer and paint. Further, the drywall is wet and soft, and the landlord wants to remove it to check for mould. If any mould is found, they will have to replace the insulation. The cabin also has sewage problems; they completed those repairs on another cabin last year, and it

may take a month or 2. During that time, the toilet cannot be used, and the repairs cannot take place in the winter months.

The landlord also stated that neither she nor her husband have entered the tenant's unit when she is not home.

Analysis

I have reviewed the *Hotel Keepers Act* and the *Residential Tenancy Act*, and I find that the *Residential Tenancy Act* applies with respect to the application before me. The *Residential Tenancy Act* also states that a tenancy agreement exists even if it is not in writing.

The Residential Tenancy Regulations set out the allowable rent increases, and for the year 2010, the allowable rent increase is 3.2%. For 2011, the allowable increase is 2.3% more than the rent previously charged. I find that the tenant's rent increase could only be raised from \$580.00 to \$598.56 per month. Further, the *Act* requires that the tenant be provided 3 months notice, and the landlord has only provided 2 months notice to the tenant. The landlord has also not provided a notice of rent increase in the approved form. The tenant has therefore paid \$70.00 per month more than the landlord is entitled to increase the rent, for January, February, March and April, 2011. The landlord is entitled to raise the rent \$18.56 per month, but only if the proper form is served on the tenant at least 3 months before the effective date of the increase.

I have also reviewed the notice provided by the landlords for ending the tenancy in order to conduct repairs. I find that the notice is not in the proper form, and must be cancelled. Section 49 (6) of the *Residential Tenancy Act* states that:

49 (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;
- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

In this case, I find that the landlord intends to renovate or repair the rental unit in a manner that may require the rental unit to be vacant, however the landlord is required to provide to the tenant notice in the approved form and must be able to substantiate that the renovations will be completed in good faith and that the tenant cannot remain in the rental unit during the renovations.

Conclusion

For the reasons set out above, I order that the landlord collect the sum of \$580.00 per month for rent until such time as the tenant has been served with a Notice of Rent Increase in the proper form and the statutory 3 months notice has been provided.

I further order that the notice to end the tenancy is cancelled. The landlord is at liberty to serve the tenant with a notice in the proper form and provide the tenant with the statutory 2 months notice if the landlord is able to establish that the necessary permits are in place prior to issuing the notice, and that the landlord intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

I further order that the landlord ensure that no entry to the rental unit is gained without the prior approval of the tenant, or upon giving the tenant at least 24 hours written notice. Further, the landlord may not collect additional rent for the tenant's guests.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed.

I further order that the landlord reimburse the tenant the sum of \$280.00 by way of rent reduction from a future month's 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: April 11, 2011.

Residential Tenancy Branch