Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened by way of conference call in response to joined Applications for Dispute Resolution filed by the Tenants on December 04 and 05, 2021 (the "Applications"). The Tenants have two separate tenancies with the Landlord; however, the Applications are joined because they raise the same issue. The Tenants seek an order that the Landlord comply with the *Residential Tenancy Act* (the "*Act*"), *Residential Tenancy Regulation* ("*Regulations*") and/or their tenancy agreements. The Tenants also seek to recover the filing fees for the Applications.

This matter came before me for a hearing March 31, 2022, and was adjourned. An Interim Decision was issued March 31, 2022, and should be read with this Decision. The hearing was reconvened on April 26, 2022.

The Tenants appeared at the March 31st hearing with M.B. and L.H., the Advocates. Counsel for the Landlord appeared at the March 31st hearing with J.S., B.S. and L.L. as representatives for the Landlord.

The Tenants appeared at the April 26th reconvened hearing with the Advocates. Counsel for the Landlord appeared at the April 26th reconvened hearing with J.S. and B.S.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenants, M.B., J.S., B.S. and L.L. provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and the parties confirmed there are no issues with service.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony and submissions as well as all documentary evidence submitted. I will only refer to the evidence I find relevant in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the *Act*, *Regulations* and/or their tenancy agreements?

2. Are the Tenants entitled to recover the filing fees for the Applications?

Background and Evidence

Overview

The history of this matter is as follows. The Tenants lived at the Old Building and had separate month-to-month tenancies with the Landlord (the "First Tenancy Agreements"). In 2015, the Landlord started the process of redeveloping the Old Building which involved demolishing it and building the New Building. Discussions occurred between the parties about what would happen with their tenancies at the Old Building. The general plan was that the Tenants would move out of the Old Building, move into the Temporary Building while the New Building was being built and then move into the New Building once complete. Pursuant to the discussions between the parties, the Tenants moved out of the Old Building in 2016. Neither the Tenants nor the Landlord provided the other a notice ending the tenancies at the Old Building pursuant to the *Act*.

In late 2016, the Tenants signed new written tenancy agreements for the Temporary Building (the "Second Tenancy Agreements") and subsequently moved into the Temporary Building.

At the end of 2019, the parties started discussing the Tenants moving to the New Building; however, the parties disagreed about the rent amount for new rental units. Specifically, the parties disagreed about the interpretation of term 5 set out in a letter dated April 28, 2016 (the "April Letter") sent from the Landlord to the Tenants. It is the disagreement about the rent amount for new rental units at the New Building, and term 5 of the April Letter, that has resulted in this dispute.

The April Letter states in part:

> …we will be implementing a Tenant Relocation Plan for all Eligible Tenants. The plan will include:
>
> 1. Advance notice of at least two months before units must be vacated.
>
> 2. Compensation equivalent to two months' rent.
>
> 3. Reimbursement of receipted moving-out expenses within [the City].
>
> 4. Assistance in finding alternate accommodations as available at any of our portfolio nearby buildings, into an equivalent/similar unit as they are currently renting, for the same rent value during the term equivalent to the building construction.
>
> 5. Right of first refusal to move back into an equivalent/similar unit in the New Building, upon completion, for the same rent amount during a two (2) years term.

The Tenants seek an order that the Landlord comply with the First Tenancy Agreements and Second Tenancy Agreements (the "Tenancy Agreements") and the *Act* and provide comparable rental units at the New Building for the same rent amount they were paying at the Old Building.

In general, the Tenants' position is that the Tenancy Agreements include the terms set out in the April Letter while the Landlord's position is that the terms set out in the April Letter were part of the Tenant Relocation Plan ("TRP") they had with the City. The Landlord says no separate agreement was made with the Tenants in relation to the terms in the April Letter.

Tenants' Position

The Tenants' evidence and submissions can be summarized as follows.

The Tenants take the position that their Tenancy Agreements with the Landlord were amended to include the terms set out in the April Letter. The Tenants submit that either the First Tenancy Agreements were amended to include the terms in the April Letter, or the terms were incorporated into the Second Tenancy Agreements. Although the

Tenants point to the April Letter as outlining the terms of the alleged amendment, they state that the amendment is not the April Letter or the Landlord's TRP with the City. The Tenants state the amendment was "never formalized in a signed document" but the terms were reiterated both verbally and in writing.

The Tenants acknowledge the Landlord required a Development Permit from the City to redevelop the Old Building. The Tenants also acknowledge the City required the Landlord to comply with tenant relocation policies and have a TRP in place.

In relation to the position that the First Tenancy Agreements were amended, the Tenants submit that they were amended to include the following terms:

a. They would provide vacant possession of their units at [the Old Building] on two months' notice;

b. They would temporarily relocate to [the Temporary Building], another building owned by the Landlord, at their same rents, until the new units were available;

c. They would resume their tenancies at [the New Building], where the Landlord would provide an equivalent unit at the same rent amount they were currently paying, for a two year term.

In support of their position, the Tenants provide evidence about, and place weight on, discussions between the parties at a public meeting and subsequent barbecue in 2015. The Tenants refer to the discussions as informing their understanding of the April Letter and the alleged amendment to their Tenancy Agreements.

The Tenants also point to correspondence between the parties including an email dated September 04, 2015, in which an agent for the Landlord tells tenants of the Old Building that the Landlord has had further communication with the City about their plan and are confirming their offered position regarding the redevelopment including temporary relocation and the opportunity "to move into an equivalent/similar unit" at the New Building "for the same rent amount during a two (2) years term." I note that the email outlines the Landlord's obligations to the tenants of the Old Building pursuant to the City's requirements. The email also mentions an upcoming public meeting about the redevelopment.

As stated, the Tenants refer to the April Letter as reflecting the terms of the alleged amendment to their Tenancy Agreements. Tenant K.G. provided evidence about the

April Letter including affirmed testimony and Affidavit evidence. Tenant K.G.'s evidence can be summarized as follows. They understood the purpose of the April Letter to be the Landlord formalizing the earlier offer that the Tenants could continue their tenancies at the New Building at their old rent amount. They thought the offer in the April Letter extended the First Tenancy Agreements. The April Letter was not a letter but a contract and amendment to the First Tenancy Agreements. They signed and dated the April Letter acknowledging agreement with the terms outlined. As a result of the April Letter, the Tenants moved out of the Old Building when asked and the Landlord did not have to obtain and enforce Orders of Possession through the RTB, which could have delayed the redevelopment process. They did not understand that the offer or plan extended in the April Letter was in the context of the TRP process between the Landlord and City. They had no concept of the TRP and did not find out about the TRP until later.

Tenant A.K. also provided affirmed testimony about the April Letter which can be summarized as follows. They understood the April Letter to be an agreement between the parties reflecting what the parties had discussed about their tenancy at the Old Building. They understood the use of the term "TRP" in the April Letter to mean it was an offer by the Landlord to them to move out of the Old Building so it could be redeveloped. They did not understand "TRP" to have any other significance and had never heard the term before. They agreed to the terms in the April Letter and complied with those terms.

The Tenants also provide evidence about, and place weight on, the fact that Tenant K.G. and another tenant of the Old Building spoke in favour of the Landlord's redevelopment plan at a public meeting on the basis that the Landlord had offered them "the same rent amount during a two (2) years term", which to them meant tenants of the Old Building would not be displaced. The Tenants submit that their support of the Landlord at the meeting impacted the outcome and the Landlord being issued a Development Permit.

The Tenants argue that the actions of the parties after the April Letter show that they believed they were bound by the terms outlined in the April Letter. The actions relied on include the Tenants moving out of the Old Building, moving into the Temporary Building for the same amount of rent and agreeing to move back into the New Building once complete. The Tenants also submit that the length of tenancy terms in the Second Tenancy Agreements complied with the April Letter in that they were tied to the completion of the New Building.

The Tenants submit that the First Tenancy Agreements have continued to the present day. The Tenants testified that they never received a notice ending the First Tenancy Agreements from the Landlord. The Tenants point out that their security deposits were carried over from the First Tenancy Agreements to the Second Tenancy Agreements. The Tenants rely on the fact that the Second Tenancy Agreements "indicate that the Tenants will move back to [the New Building] on completion." Tenant K.G. testified that they did not think of the Second Tenancy Agreements as new tenancy agreements because they had an agreement with the Landlord to move out of the Old Building and move back into the New Building. Tenant K.G. testified that the Landlord did not indicate that the Second Tenancy Agreements were new and ongoing tenancies and in fact it was understood that they were temporary while the New Building was being built. Tenant A.K. testified that they did not think of the Second Tenancy Agreements as new tenancy agreements because the Temporary Building was temporary accommodation which was made clear by the Landlord.

In relation to the submission that the Second Tenancy Agreements incorporated the terms of the April Letter, Tenant K.G. testified that this was clear to all parties. The Tenants rely on the fact that the length of tenancy terms in the Second Tenancy Agreements are tied to completion of the New Building.

As stated, in late 2019, agents for the Landlord contacted the Tenants about moving into the New Building and it was at this point that the parties disagreed about the rent amount for units at the New Building and the interpretation of term 5 of the April Letter. The Tenants state that the City withheld final permits for the New Building until they determined the Landlord had complied with the TRP and that permits were eventually issued in February of 2020.

I note that the Tenants touched on the City's involvement in the redevelopment process throughout their testimony as follows. Tenant K.G. testified that the Landlord did not find a temporary rental for them until they called the City about this. Tenant K.G. testified that they knew the City would hold the Landlord to account and noted that the City did withhold permits after they called about the Landlord's lack of assistance in finding a temporary rental. Tenant K.G. also testified that they did not think about going to the RTB to enforce an amendment to the First Tenancy Agreements when the Landlord failed to assist them in finding a temporary rental because they are "not that legally minded" and do not know the details of the system. Tenant A.K. testified that they knew the City was involved in the permitting aspect of the redevelopment. Tenant A.K. stated that they did not ask questions about the City's involvement in the TRP because they did not think they needed to and are not familiar with tenancy law. Tenant

A.K. further testified that they thought the Landlord making the offer in the April Letter and them signing it was a legally binding contract. When questioned by Counsel for the Landlord about details of the Tenants' argument, Tenant A.K. said they are not sure which tenancy agreement was amended by the April Letter.

In response to the Landlord's position, the Advocates submit that the April Letter and the TRP are not the same. The Advocates rely on a September 01, 2019 letter from J.S. to Tenant K.G. which states in part:

> [the Landlord] would like to give you the first opportunity to enter into a new tenancy agreement at [the New Building] once an occupancy permit is obtained.
>
> Per the letter you received dated April 28, 2016 and the [City's TRP] you are entitled to…

The Advocates argue that there was no reason for J.S. to point out that Tenant K.G. had rights under two separate agreements and that the parties acted as though they were bound by a separate agreement. The Advocates also submit that an email from an agent for the Landlord dated December 12, 2019 supports the position that there were two separate agreements between the parties as it states in part:

> …there is a strong case that our offer is limited to the time of construction of the new building and it is part of their current lease agreement…

Also in response to the Landlord's position, the Advocates submit that temporary relocations do not end tenancies. The Advocates use an example, that they say is common, of a tenant temporarily moving out of a rental unit due to a flood which does not end the tenancy.

In further response to the Landlord's position, the Advocates submit that the Landlord cannot rely on the terms in the First Tenancy Agreements and Second Tenancy Agreements about amendments needing to be in writing because the parties amended the Second Tenancy Agreements verbally when the Landlord failed to enforce the vacate clauses when the New Building took more than 30 months to complete.

To support their position, the Tenants rely on sections 1, 5, 6, 14 and 58 of the *Act* as well as sections of the *Act* and *Regulations* about rent increases. The Tenants also rely on case law regarding the interpretation of contracts and tenancy agreements.

The Tenants submitted documentary evidence including correspondence between the parties, correspondence between the parties and the City, Offers to Lease and the Second Tenancy Agreements. I have reviewed all of the documentary evidence and will refer to it more specifically below as necessary.

Landlord's Position

The Landlord's evidence and submissions can be summarized as follows.

The Landlord takes the position that the Tenants have failed to identify any section of the *Act* or a common law principle that allows for the order they are seeking.

The Landlord submits that their only agreement regarding the terms in the April Letter was with the City in relation to the TRP. The Landlord states that they did not form a separate agreement with the Tenants relating to the terms in the April Letter.

The Landlord states that the First Tenancy Agreements included terms which required amendments to be in writing. The Landlord points out that the Tenants concede the alleged amendments to the First Tenancy Agreements were not in writing and submit that the Tenants therefore cannot claim that the alleged agreements amended the First Tenancy Agreements.

The Landlord says that, at the time the Landlord decided to redevelop the Old Building, the City had a policy which required the Landlord to provide benefits to tenants over and above the *Act* as a condition of the permit application process. The Landlord states that the City required the TRP as a condition of issuing development and occupancy permits. Further, the Landlord states that they were required by the City's policies to provide a letter to tenants of the Old Building summarizing the draft TRP, which was the purpose of the April Letter. The Landlord says the April Letter fulfilled their obligation to the City and simply notified the Tenants of the draft TRP. The Landlord maintains that the terms in the April Letter were obligations the Landlord had to the City which were agreed to in exchange for the Development Permit. The Landlord submits that the April Letter did not constitute a contract between the Landlords and Tenants. The Landlord states that there is no agreement between the parties that includes the terms of the April Letter and includes the essential elements of a contract. The Landlord further says they did not act as if they were bound by a separate agreement with the Tenants. The Landlord says their actions in accordance with the April Letter do not show that there was a contract between the parties because the Landlord was obligated to act in accordance with the April Letter further to the TRP with the City.

The Landlord argues that the Tenants were not a party to the TRP agreement they had with the City and point to a letter from the City dated February 06, 2020 in support of this position. The Landlord submits that the Tenants cannot seek to enforce the terms of the TRP because they are not a party to the agreement.

The Landlord further states as follows. The *Act* does not allow for ongoing tenancies which transfer between units and buildings. Tenancy agreements relate to a specific rental unit. Section 44(1)(d) of the *Act* states that a tenancy agreement ends when a tenant vacates the rental unit. The Tenants did vacate their respective rental units at the Old Building and therefore the First Tenancy Agreements ended. The Tenants were not required by any agreement with the Landlord to move out of the Old Building. The Tenants could have waited until they were served with a notice to end tenancy pursuant to the *Act* before moving out. The Tenants chose to move out of the Old Building and the First Tenancy Agreements came to an end when the Tenants did so.

The Landlord points out that the Tenants signed the Second Tenancy Agreements and submits that these were new tenancy agreements. The Landlord states that the Second Tenancy Agreements include terms stating that amendments must be in writing. The Landlord also notes that none of the TRP terms were included in the Second Tenancy Agreements.

Legal Counsel for the Landlord provided oral submissions including the following. The RTB does not have to decide the interpretation of term 5 in the April Letter because the obligation outlined in the April Letter is to the City under the TRP and not part of a tenancy agreement and therefore not within the jurisdiction of the RTB. In relation to the Tenants' argument that the parties amended the length of tenancy terms in the Second Tenancy Agreements, the law had changed at the relevant time such that the Landlord could not enforce the vacate clauses. The Landlord told the Tenants about the City's role in the process in the September 4, 2015 email from J.P. to another tenant of the Old Building.

The Landlord submitted statements, the First Tenancy Agreements, correspondence between the parties, correspondence between the Landlord and City, the Second Tenancy Agreements and case law. I will refer to the relevant documentary evidence more specifically below as necessary.

Analysis

Pursuant to rule 6.6 of the *Act,* it is the Tenants as applicants who have the onus to prove they are entitled to the order they are seeking. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Tenants seek an order pursuant to section 62(3) of the *Act* which states:

> (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The Tenants request an order for the Landlord to comply with their Tenancy Agreements and the *Act* and provide comparable rental units for the same rent at the New Building. I decline to make this order because I am not satisfied based on the evidence provided that the Tenants have proven they are entitled to this order. Specifically, I do not accept that the First Tenancy Agreements were amended, that the First Tenancy Agreements are continuing or that the Second Tenancy Agreements incorporated the terms set out in the April Letter. I do not accept these points for the following reasons.

I do not accept that the First Tenancy Agreements were amended. The Tenants state that the First Tenancy Agreements were amended verbally. The Landlord denies that the First Tenancy Agreements were amended verbally. Given the conflicting testimony, I have considered the documentary evidence before me.

I do not find general discussions between the parties at public meetings or barbecues about the redevelopment relevant. What is relevant is what, if anything, was specifically agreed to between the parties.

I accept that the First Tenancy Agreements included terms stating that amendments must be in writing because the Tenants do not dispute this. Further, I would expect an amendment as significant as the terms outlined in the April Letter to be in writing given the importance of the terms. I find it unlikely that the parties agreed verbally to amend the First Tenancy Agreements and failed to put this in writing as this goes against the terms of the First Tenancy Agreements and against common sense. I acknowledge the Advocates submit that the Landlord should not be permitted to rely on the terms in the First Tenancy Agreements requiring amendments to be in writing because of the actions

of the Landlord regarding the vacate clauses in the Second Tenancy Agreements. I do not find the actions of the Landlord in relation to the Second Tenancy Agreements particularly relevant in deciding what they did in relation to the First Tenancy Agreements. Further, I do not accept that the Landlord not enforcing vacate clauses is the same as the parties agreeing to amend the First Tenancy Agreements. As well, I agree that the Landlord could not enforce the vacate clauses in 2019, the relevant year.

I find the documentary evidence clear that the terms in the April Letter were part of the TRP the Landlord had with the City because the documents refer to the TRP and the City, or involve the City. The Tenants have not pointed to where in the documentary evidence there is reference to amending the First Tenancy Agreements.

The Tenants specifically rely on the September 04, 2015 email between an agent for the Landlord and tenants of the Old Building to support their position. I find this email clear that the Landlord was communicating their offered position further to the TRP with the City because the email specifically refers to the TRP and refers to the City throughout.

Further, I find the April Letter clear that it relates to the TRP with the City as it specifically states, “As such, we will be implementing a Tenant Relocation Plan for all Eligible Tenants. The plan will include…” and then outlines the five terms. Again, the April Letter refers to the TRP and City throughout.

I do not accept that the Tenants signed the April Letter as though it was an agreement. The April Letter sets out what the Landlord intends to do in relation to the TRP. The April Letter is not an offer by the Landlord and does not seek agreement from the Tenants. Further, the signatures of the Tenants are clearly to acknowledge receipt of the letter because the relevant signed portion states, “We hereby acknowledge receipt of this letter and sign and date and return a copy…”

I do not find the Advocates’ position that the wording in the September 01, 2019 letter from J.S. to Tenant K.G. shows there was a separate agreement between the parties to be compelling. The style of J.S.’s writing is not compelling evidence showing there were two separate agreements between the parties, both with the terms outlined in the April Letter.

I acknowledge that the email authored by an agent for the Landlord dated December 12, 2019 suggests that the Landlord’s offer is part of the Second Tenancy Agreements; however, I understand this position to be in relation to the length of tenancy terms in the

Second Tenancy Agreements. I find it undisputable that the length of tenancy terms in the Second Tenancy Agreements are tied to completion of the New Building because the terms outright state this. However, I do not agree that the length of tenancy terms being tied to completion of the New Building means all five terms of the April Letter were incorporated into the Second Tenancy Agreements, including term 5 which is at issue between the parties.

I do not accept that the parties acting in accordance with the terms in the April Letter changes the context or nature of those terms. The Landlord was presumably bound to act in accordance with the terms in the April Letter pursuant to the TRP with the City. The Landlord acting in accordance with the TRP does not support that there was a separate agreement between the parties or that the terms in the April Letter were included in the Tenancy Agreements. Further, the Tenants were free to act in accordance with the terms in the April Letter and chose to do so. The Tenants choosing to act in accordance with the terms in the April Letter does not change the context or nature of those terms.

I find based on the evidence provided, including the Tenants' own testimony, that the Tenants did not know or understand their rights and obligations, or those of the Landlord, pursuant to municipal and provincial laws relating to tenancies. The Tenants' failure to know and understand their rights and obligations does not now change the context or nature of the discussions between the parties. I find the correspondence between the parties clear that the terms in the April Letter were set out in the context of the TRP with the City because the relevant correspondence states this. The Tenants not understanding the legal difference between the TRP and an amendment to the First Tenancy Agreements does not change that the terms in the April Letter were part of the TRP and that no separate agreements existed.

I do not accept that the First Tenancy Agreements continue to the present day. Section 44(d) of the *Act* states that a tenancy agreement ends when a tenant vacates the rental unit. The Tenants did vacate the rental units at the Old Building. The First Tenancy Agreements ended when the Tenants vacated.

The Advocates' reliance on a scenario where there is a flood and tenants temporarily vacate a rental unit is misplaced. I do not accept that it is usual for tenants to move all of their belongings out of a rental unit, give up possession of the rental unit, live at another location for an extended period of time and have continuing tenancies. It may be somewhat usual for tenants to stay at another location for a short period of time and remove some of their belongings from a rental unit without their tenancies ending, but

this is not what occurred here. Here, the Tenants moved all of their possessions out of the rental units at the Old Building, gave up possession of the rental units, signed new written tenancy agreements for the Temporary Building and moved out of the Old Building. Further, the Old Building was demolished such that the Tenants' previous rental units at the Old Building do not exist. In these circumstances, the First Tenancy Agreements could not have continued because tenancy agreements relate to specific rental units as stated in the definition of "tenancy agreement" in section 1 of the *Act*. The Tenants cannot have ongoing tenancy agreements in relation to rental units that no longer exist.

I also note that, if the First Tenancy Agreements were continuing, the Tenants would have continued to be responsible for paying rent, continued to have access to their previous rental units at the Old Building and continued to be responsible for what occurred in the rental units, none of which is the case.

As stated, the Tenants signed new written tenancy agreements for new rental units at the Temporary Building. Although signing a new written tenancy agreement for a different location does not necessarily result in a prior tenancy agreement ending, I do find that the signing of the Second Tenancy Agreements supports the Landlord's position and tends to contradict the Tenants' position about there being continuing tenancies in relation to the Old Building.

I agree with the Landlord that the Tenants have not pointed to a section of the *Act*, *Regulations* or common law principle that allows for tenancy agreements to continue in the circumstances presented in this matter. I acknowledge that the Tenants point to the transfer of their security deposits to support that there is a continuing tenancy; however, I find this is a business and financial practice that does not have any legal bearing on whether a tenancy continues or not.

I do not accept that the Second Tenancy Agreements incorporated the terms set out in the April Letter because the Tenants did not point to where in these written agreements the terms are stated. The Tenants did argue that the length of tenancy terms incorporated the April Letter; however, I do not agree as this is only one aspect of the April Letter and simply sets out the length of the tenancies at the Temporary Building, it does not include additional obligations of the Landlord.

I find it clear in the documentary evidence as a whole and in the Tenants' own testimony about the involvement of the City in relation to the terms in the April Letter that the terms now sought to be included in the Tenancy Agreements were part of the TRP with the

City and not part of either the First Tenancy Agreements or Second Tenancy Agreements.

Whether the Tenants can enforce terms of the TRP is not an issue I can decide as the RTB does not have jurisdiction over TRP agreements, which are separate and apart from tenancy agreements.

I do not find it necessary to decide the interpretation of term 5 of the April Letter because I find those terms are part of the TRP with the City and therefore outside the jurisdiction of the RTB to decide.

Given the above, I dismiss the Applications without leave to re-apply. The Tenants are not entitled to recover the filing fees for the Applications given they have not been successful.

Conclusion

I dismiss the Applications without leave to re-apply.

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 25, 2022

Residential Tenancy Branch