Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMPERIAL GRAND FORKS HOLDINGS INC. DBA IMPERIAL MOTEL and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, DRI

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant B.A. on October 21, 2022, under the *Residential Tenancy Act* (the Act), seeking to:

- Cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice); and
- Dispute a rent increase that is above the amount allowed by law.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on January 19, 2023, and was attended by the Tenant, their support worker T.C., a director for the corporation that is the Landlord, G.K. (Agent), their lawyer R.L., and G.K.'s father H.K., who had an interpreter with them. All testimony provided was affirmed. Although the Agent and their lawyer acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), the lawyer stated that neither the fact sheet nor the respondent instructions were served; however, the Tenant and their support worked disagreed. In any event, the Agent and their lawyer were clearly aware of the date and time of the hearing, how to attend, as well as how and when to submit and serve documentary evidence, as they appeared at the hearing on time and submitted and served documentary evidence for consideration in relation to the Application. The hearing therefore proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

The parties were agreed that the Tenant vacated the living accommodations at the end of October 2022, and therefore the dispute of a notice to end tenancy was no longer necessary. In any event, I find that the notice to end tenancy disputed by the Tenant was not in fact a 10 Day Notice for Unpaid rent or Utilities under section 46 of the Act, but rather a notice of prohibition of entry to the premises allegedly issued pursuant to the Trespass Act.

Preliminary Matter #2

At the hearing I verified that the name listed for the Landlord in the Application is a “doing business as” name and ascertained the full legal name for the Landlord, which is a corporation. G.K. stated that they and their spouse are both directors of the corporation. The Application was amended accordingly to properly name the Landlord.

Preliminary Matter #2

Although the Agent and their lawyer argued that a residential tenancy under the Act did not exist, as the living accommodation rented was in a motel, the Tenant and their support worker disagreed, arguing that a residential tenancy was none the less established even though the living accommodation rented was in a motel.

The primary focus of the arguments made by the Agent and their lawyer in relation to jurisdiction were that the property in which the living accommodation is located is a motel, and the person who permitted the Tenant occupancy was not authorized by the Landlord or their agents to do so. There was no disagreement between the parties that the living accommodation rented to the Tenant is located in a motel and although section 4(e) of the Act states that the Act does not apply to living accommodation occupied as vacation or travel accommodation, this does not preclude landlords and tenants from entering into tenancy agreements under the Act for living accommodations located in hotels, motels, and other types of traditionally vacation related accommodations. In fact, section 59(6) of the Act even states that an individual occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that the Act applies to that living accommodation.

I find that it is the nature of the agreement entered into between the parties, and the reason for occupancy, that determine whether living accommodation rented is or is not excluded under section 4(e) of the Act. Residential Policy Guideline (Policy Guideline) #27 states under section 5, subsection b, that the Act does not apply to vacation or travel accommodation being used for vacation or travel purposes but does apply if the living accommodation is rented under a tenancy agreement. Policy Guideline #27 also sets out some factors that may determine if a tenancy agreement under the Act exists, such as:

- whether the agreement to rent the accommodation is for a term;
- whether the occupant has exclusive possession of the hotel room;
- whether the hotel room is the primary and permanent residence of the occupant; and
- the length of occupancy.

Policy Guideline #27 also states that even if a hotel room is operated pursuant to the Hotel Keepers Act, the occupant is charged the hotel room tax, or the occupant is charged a daily rate, a tenancy agreement under the Act may still exist, which may be

written or oral. As a result, I do not find the motel registration slip submitted by the Agent and their lawyer, dated September 20, 2022, showing that GST, a provincial room tax, and an MRD tax were charged, to be determinative on the matter of jurisdiction.

Although the Agent and their lawyer stated in their written submission/arguments and at the hearing that at no time was the Tenant's stay intended to be permanent, "permanence" is not a factor I find to be relevant to the matter of jurisdiction as tenancies are, by their very nature, impermanent. It is clear to me from the testimony of the Tenant and the support worker, as well as the documentary evidence before me, such as the Shelter Information Form, that the Tenant began occupying the living accommodation on July 1, 2022. As a result, I find this as fact. I am also satisfied based on the written submissions of the lawyer, the Shelter Information Form, and the testimony of the parties at the hearing that the living accommodation was rented to the Tenant monthly for at least July, August, and September of 2022, despite the testimony and submissions of the Agent and lawyer that the maximum stay length was routinely 7 days for motel guests.

While the Agent argued that the Tenant was never guaranteed exclusive possession, and the living accommodation could be entered at any time with a master key for housekeeping and other purposes, they acknowledged that no housekeeping services were provided to the Tenant and that the master key was not used for entry as the Tenant put up a "do not disturb" sign and barred entry. However, I do not find possession of a master key to be determinative on the matter of exclusive possession, as owners and agents regularly maintain keys to units rented under residential tenancy agreements as a matter of practicality and for safety and inspection purposes. However, I do find it relevant that housekeeping services were not provided to the Tenant and the rental unit was never entered by the Agent or any other agents for the Landlord using the master key, despite the fire risk and other safety concerns noted in the written submissions, and the assertion of the Agent and lawyer that the Tenant did not have exclusive possession of the rental unit. As a result, I find on a balance of probabilities that the Tenant had exclusive possession of the living accommodation.

It was also clear to me from the testimony of the Tenant and their support worker that the living accommodation rented to the Tenant at the dispute address was not rented for the purpose of vacation or travel accommodation and was the Tenant's primary and only residence. The Tenant stated that prior to moving into the unit they had lived in the community in which it is located for two years, and that when their previous tenancy

ended because the property was sold, they entered into a periodic (month-to-month) verbal tenancy agreement with an agent for the Landlord, C.R., as rental accommodation in the small and remote community is significantly lacking. The Tenant's support worker stated that the motel is also well-known in the community for monthly rentals and the Tenant stated that 9 other tenants reside at the motel and rent rooms monthly, some of whom have lived there for many years. The Tenant stated that they still reside in the community even though they vacated the living accommodations at the motel at the end of October 2022. Neither the Agent nor their lawyer disputed the above testimony or presented any arguments that the Tenant was either renting the living accommodations for vacation or travel purposes, or maintained a separate primary residence elsewhere.

In a written submission by the Agent's lawyer, it is stated that an unnamed employee previously managed the property until "about August 2022" and that the Agent's father H.K. began managing the property in September of 2022. This statement is inconsistent with the testimony of the Agent at the hearing that their former manager P.B. stopped managing the property sometime in June of 2022, after which time the motel was managed by H.K. for a short period of time until they became ill near the end of June/beginning of July. The Agent stated that the motel was then closed and unmanaged until September of 2022 when H.K. returned to manage the property. H.K. also appeared at the hearing and provided affirmed testimony through an interpreter, which was again inconsistent with both above noted timelines. H.K. stated that they managed the property between 2016-2018, and then not again until September of 2022.

Although the Agent repeatedly referred to the motel as closed and unmanaged between the end of June/start of July and the date H.K. returned in September, they acknowledged under direct questioning that they continued to employ staff at the motel during that time, such as housekeepers, and that previous occupants were permitted to continue residing there. As a result, I find the Agent intentionally provided inaccurate affirmed testimony to mislead me with regards to whether the motel was or was not in operation at the time the Tenant began occupying the living accommodations. Although the Agent stated that the front desk was closed and none of the staff were permitted to accept payments or permit new occupants/guests, and as a result C.R., who is a housekeeper, was not permitted to allow the Tenant to move-in, I am not satisfied that this is the case. No job description for C.R. was provided and the Applicant and their support worker both argued that C.R. was an authorized agent. I also find that it does not stand to reason or common sense that a motel would be left in operation, with employees being paid, and rooms occupied, without anyone being responsible for the

daily operations of the property. Finally, given the above, I find the Agent's testimony significantly lacking in credibility, an issue further exacerbated by the inconsistencies between their testimony, H.K.'s testimony, and the submissions and arguments of their lawyer.

The Agent acknowledged that C.R. was an employee of the Landlord, that C.R. has a master key for the units, and that C.R. was working for the Landlord at the motel at the time the Tenant began occupying the living accommodations. As set out above, I do not accept the Agent's position that C.R. was not an agent for the Landlord and was not permitted to allow occupancy. I found the Agent's testimony overall unreliable, and no documentary evidence was submitted to establish that C.R.'s job duties did not include things that would make them an agent for the Landlord under the Act. In contrast, the Tenant submitted a Shelter Information Form listing C.R. as a landlord, and when taken with my above noted findings about C.R.'s employment at the motel, I therefore find that the Tenant has satisfied me, on a balance of probabilities, that C.R. was an agent for the Landlord under the Act.

While I have read the previous Residential Tenancy Branch (Branch) decisions provided by the Agent and their lawyer for my review, as set out in section 64(2) of the Act, I am obligated to make this decision and any related orders on the merits of this case as disclosed by the evidence admitted and I am not bound to follow other decisions from the Branch. In any event, while there are some similarities between the case before me and those noted in the previous decisions, I do not find the fact patterns of those decisions sufficiently similar to the fact pattern before me and I note that all of the documentary evidence and testimony upon which those arbitrators rendered their decisions is also not before me. As a result, I have rendered my decision with regards to jurisdiction on the specific circumstances, documentary evidence, and affirmed testimony before me, a modern interpretation of the relevant sections of the Act and/or regulations, and Policy Guideline #27.

Based on the above, I am satisfied that a verbal periodic (month-to-month) residential tenancy agreement existed between the Tenant and an agent for the Landlord, which began on July 1, 2022, and ended sometime near the end of October 2022. Having made this decision, I will now turn my mind to the Tenant's claim disputing a rent increase.

Issue(s) to be Decided

Was the rent increased in September of 2022 contrary to Part 3 of the Act?

Background and Evidence

I have already found above that a verbal tenancy agreement to which the Act applies existed between the Tenant and an agent for the Landlord C.R., which began on July 1, 2022. The Tenant stated that rent in the amount of $1,100.00 was due on the first day of each month and submitted a Shelter Information Form for the Ministry of Social Development and Poverty Reduction, completed on behalf of the Tenant and signed by C.R., stating that rent in the amount of $1,100.00 is due each month, of which $550.00 is the responsibility of the Tenant as there is another adult occupant in the unit. The Tenant stated that the Landlord arbitrarily increased their rent in September of 2022, to $1,250.00 and sought recovery of $150.00 in overplayed rent. The Tenant stated that they do not have rent receipts as all rent was paid in cash and the Landlord's agents refused to issue receipts.

The Agent and lawyer stated that room rates at the motel are subject to change and that when the Tenant negotiated an extension to their stay, which they believe not to be a tenancy under the Act, in September of 2022, the Landlord was entitled to charge as they saw fit. They submitted a motel registration slip in the Tenant's name and the name of the other occupant/co-tenant R.H. stating that $1,247.75 was on September 20, 2022, calculated as follows:

- $1,085.00 for 7 days calculated at $155.00/day;
- Plus $54.25 in GST;
- Plus $86.80 for provincial room tax;
- Plus $21.70 MRD tax.

The Agent and lawyer argued that as there was no tenancy, the rent increase provisions of the Act do not apply and therefore there was no rent overpayment.

Analysis

I am satisfied a tenancy under the Act existed which commenced on July 1, 2022. I am also satisfied based on the Tenant's affirmed testimony and the Shelter Information Form, that the amount of rent payable at the start of the tenancy was $1,100.00 per month. The parties agreed that the amount charged for September of 2022 was greater

than $1,100.00. While the Tenant stated that they were charged $1,250.00, no documentary evidence was submitted in support of this amount and the motel registration slip states $1,247.75 was charged on September 20, 2022. I find the registration slip to be more compelling than the Tenant's testimony alone, and therefore I am satisfied that the Tenant paid $1,247.75 in September of 2022, not $1,250.00.

The parties agreed that no notice of rent increase (NORI) was served, and the Agent and their lawyer stated that this was because of the belief that the Act did not apply. However, I have already found that a residential tenancy under the Act was nonetheless established, and I therefore find that the Landlord was bound by the rent increase provisions set out under Part 3 of the Act. As the tenancy had begun only a few months prior to the rent increase, I find that the Landlord was not entitled to increase the rent in September of 2022, even through the issuance of a NORI.

Based on the above, I find that the Landlord improperly increased the rent in September of 2022 from $1,100.00 to $1,247.75, resulting in a rent overpayment by the Tenant and or their co-Tenant under the same tenancy agreement, R.H. As tenants under the same tenancy agreement are jointly and severally liable for the payment of rent under the Act, and the registration slip contains the Tenant's signature, I find that the Tenant is entitled to recovery of the full $147.75 rent overpayment for September of 2022. Should there be a dispute between the Tenant and R.H. about how this recovered amount should be apportioned between them, the parties should seek independent legal advice or dispute resolution through the appropriate court of competent jurisdiction, such as the BC Small Claims Court or the Civil Resolution Tribunal (CRT), as the Branch does not have jurisdiction over disputes between roommates. Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of $147.75.

Although the Tenant stated that they vacated the rental unit near the end of October 2022, no evidence or testimony was provided by either party regarding the payment of October 2022 rent and the Tenant did not seek to amend their application at or prior to the hearing to include a rent overpayment amount for October of 2022. As a result, I have only dealt with September of 2022 in relation to the rent overpayment.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$147.75**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: January 25, 2023

Residential Tenancy Branch