



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PARQ CENTRAL INVESTMENTS
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, DRI, PSF, FF (7 files)
 OLC, FF (file ***9268 only)

Introduction

This hearing dealt with applications by tenants living in 8 different units on the second floor of the property seeking remedy under the Residential Tenancy Act (Act). All but one tenant filed for the following:

- to dispute a rent increase that is above the amount allowed by law;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the cost of the filing fee.

The tenant in the file ending in 9268 filed for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and recovery of the cost of the filing fee.

The applications were joined as they met the criteria under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 2.10.

All tenants apart from SI and DL attended. SI was represented by their spouse, SD. The co-tenant of DL was present. Tenant JMH was designated as the lead tenant.

The landlord was represented by an owner, SS, and legal counsel (counsel).

The hearing procedure was explained and all parties were affirmed. The landlord confirmed receipt of the tenants' applications and evidence. The landlord filed evidence

in only one application; however, the evidence was a document which all tenants had received and was a compilation of the tenants' evidence, according to counsel.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Do these disputes fall under the jurisdiction of the Act?

If so, are the tenants entitled to the common relief sought in their applications as noted above and recovery of the cost of the filing fee?

Background and Evidence

In the lead tenant's application, the request was the following:

I want owners to: acknowledge my verbal tenancy agreement I had with the previous owners; use the proper procedure for rent increase; provide the building Strata with form K. Owners have stated that we are living here illegally as this is a hotel and that "previous owners informed them that these units are short term rental so the tenants have no rental agreements", and since December 2022 they are asking for \$3200 rent (75% increase) without form RTB-7. More details attached.

Undisputed Facts

The present landlord took ownership of the residential property on July 15, 2022, having purchased the property from the original landlord of the tenants, a BC numbered corporation, who was described as the developer.

All tenants in this dispute reside on the 2nd floor of the building.

All tenants have lived in their respective units for multiple years. Two tenants have lived in their respective units since 2013, one tenant since 2014, one tenant since 2015, two tenants since 2016, one tenant since 2018, and another since 2021.

Three set of tenants have written tenancy agreements that were filed in evidence.

All tenants received a written notice from the current landlord, introducing themselves to the tenants, and informing the tenants that “they would like to meet with the tenants and do the inspection for the units 201 to 221”. The dates provided were on July 30 and July 31, between 10 am to 5:00 pm. Filed in evidence was the written notice.

Once the landlord assumed ownership in July 2022, all tenants continued to pay the same rent to the new landlord as they were paying to the previous landlord, through November 2022.

On December 6, 2022, all tenants were given an invoice from the landlord. The invoice informed the tenants their December 2022 rent payment was deficient, listing their new monthly rent instead. The rent increases ranged from 75%, for the newest tenant, to 175% for the longer term tenants.

All tenants paid a security deposit to the previous landlord and are paying a set monthly rent to the landlord and pay their own hydro, as billed to them separately by the landlords with their unit numbers.

Most tenants have 2 bedroom, 2 bathroom units. Some units had a den. Two units were 1 bedroom, 2 bath.

All tenants requested their tenancies be recognized, along with the monthly rent they have been paying and that the landlord be required to serve a notice of rent increase on the standard RTB form.

Additionally, most of the tenants also requested that they continue to have front door “buzzer access”, and that the landlord be required to give them new Form K forms in recognition of their tenancies.

In response, counsel submitted that these disputes fall outside the jurisdiction of the Residential Tenancy Act, by way of section 4 (e). According to the Terms of Instrument, Restrictive Covenants (covenants), there can be no lodging in excess of 182 days on the 2nd floor and the intended purpose for the units was to always to be used as a hotel. Counsel submitted there is a front desk at the entrance of the building to check in guests and that as of July 2022, the tenants have been told they were not tenants. The landlord is required to comply with the covenants.

The landlord stated that when their company put an offer on the property, they were not aware of the terms of instrument with restrictive covenants. The landlord said they were told that they would be given vacant possession of all units on the 2nd floor, that there were no tenancy agreements as all units were short term rentals. At the closing, the landlord was told that the occupants of 10 had vacated and 8 units remained occupied. The landlord said there was a lot of back and forth at this time, but they were ultimately told by their lawyers they had to complete the sale.

The landlord agreed they continued to accept the rent payments from the tenants when they assumed ownership.

Filed evidence included a copy of the covenants, the December 2022, and January 2023 invoice from the landlord to the tenants, reflecting the increased monthly rent, and an email of explanation from the landlord, written tenancy agreements for 3 of the tenants, and previous strata Form K agreements.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Jurisdiction

The landlord has challenged the jurisdiction of the RTB in deciding the joined applications, claiming exclusion from the Act under section 4(e) of the Act, which states the Act does not apply to living accommodation occupied as vacation or travel accommodation. There were also references in the evidence that the units are under the Hotel Keepers Act.

On this issue, the burden of proof is on the person making the claim, the landlord in this case, and is on a balance of probabilities.

The Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Tenancy Policy Guideline (Guideline) 9 states the following:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- *the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and*
- *the tenant pays a fixed amount for rent.*

Another factor to consider is whether a security deposit was paid.

Guideline 27 offers guidance in determining whether a tenancy exists under the Act.

b. Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if the accommodation is rented under a tenancy agreement, the RTA applies. For instance, the RTA would likely apply to a winter chalet rented for a fixed term of 6 months.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- *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;*
- *the length of occupancy.*

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 RTA may exist. A tenancy agreement may be written or oral.

After considering all the evidence before me, I find I have jurisdiction to decide these disputes.

I base this decision on the undisputed evidence that each tenant was granted exclusive possession of their rental unit and have had long-term, uninterrupted occupation. The evidence I find shows that the rental units have been the tenants' primary and permanent residence for many years. Apart from the lead tenant, all tenancies ranged in length from 5-10 years. The lead tenant's tenancy was for 2 ½ years, at least. I find the undisputed evidence is that each tenant pays a fixed amount of rent each month, their own hydro bill and each tenant paid a security deposit. At no time have the tenants paid a daily rent or hotel taxes.

I also considered that three of the separate tenants did have written tenancy agreements with the previous landlord and some tenants had signed Form K agreements with the previous landlord.

I have reviewed the undated and incomplete restrictive covenants filed in evidence. I disagree that the covenants designated the 2nd floor as 18 extended stay hotel units as no floor was designated. I find the previous owners allowed a conversion of the extended stay units to apartment units prior to the current landlord's ownership, as I find they entered into residential tenancy agreements with the tenants since 2013. This is in effect a breach of their own restrictive covenant. I find this issue is now a moot point.

For all these reasons, I find that the tenants and the previous landlord entered into tenancy agreements that fall under the jurisdiction of the Act. When a purchaser buys a property with existing tenants, the buyer becomes the new landlord.

As I find jurisdiction to decide these disputes, I find it necessary to issue orders, pursuant to section 62(3) of the Act.

Sections 41, 42 and 43 of the Act require that rent increases be in the approved form, that they be served at least three clear months before the increase is to take effect, and are within the maximum allowable percentage set out in the regulations. None of the

landlord's notices of rent increase served by email comply with these requirements, and all are substantially beyond the permissible amount.

In this case, I find it appropriate to, and I therefore **order** the landlord to comply with the Act and regulation regarding rent increases.

For this reason, I **order** that the emailed notices of rent increase dated December 6, 2022, are **cancelled** and are of no force or effect. I **order** that the tenants' respective monthly rent payments are restored to the amounts being paid by each tenant when the landlord assumed ownership. As the tenants said they had not paid the additional requested amount, I do not order that they are entitled to reimbursement of an overpayment.

Additionally, as I have found that the tenants have entered into residential tenancy agreements and are tenants under the Act, I **order** the landlord to restore all services that were provided to the tenants when they purchased the units, **within one (1) month of this Decision**. This may include front door buzzer access, as well as access to the gym, pool, and amenities room.

As the tenants' applications were successful, I grant each tenant the recovery of the \$100 filing fee. I **authorize each** tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

Conclusion

The tenants' joined applications were granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 27, 2023

Residential Tenancy Branch