

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78.

between

REGINALD MARIO WALTON, Tenant(s),

Applicant(s)

and

627017 B.C. LTD., Landlord(s),

Respondent(s)

Re: An application pursuant to sections 49, 62 and 67 of the *Residential Tenancy Act* regarding the premises at:

#310 - 116 W. Hastings Street, Vancouver, British Columbia

Date of hearing: March 14, 2007, by conference call.

DECISION AND REASONS

Attendance

For the applicant: Shabnum Durrani (counsel)

For the respondent: Taik Uh and George Horner

NATURE OF APPLICATION

- [1] This is an application by the tenant for the following:
- An order canceling a Notice to End Tenancy.
 - An order that the landlord comply with the Act or the tenancy agreement.
 - A monetary order for over-payment of rent totaling \$1,320.00.

PROCEDURE

- [2] Counsel for the applicant and the agents for the respondent attended a hearing at 1.00 p.m. on 14 March, 2007, with respect to file #194480. The issues arising from that application are the same issues arising from this application, which was scheduled to be heard at 2.00 p.m. on 14 March, 2007. The parties agreed that rather than re-argue the same issues, the oral testimony and argument presented during the hearing under file #194480 should be included as oral testimony and arguments for this hearing.

PRELIMINARY ISSUE

- [3] The landlord requested an adjournment of approximately 2 weeks so that they could provide supporting evidence.

- [4] Rule 6 of the Arbitration Rules of Procedure states, in part:
- 6.4 Without restricting the authority of the Dispute Resolution Office to consider other factors, the Dispute Resolution Officer must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:
- a) the oral or written submissions of the parties;
 - b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [to ensure a consistent, efficient and just process];
 - c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
 - d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
 - e) the possible prejudice to each party.
- [5] Counsel for the applicant opposed the adjournment on the basis that her client has the possibility of eviction hanging over him.
- [6] The agent for the landlord advised that the adjournment was being requested so that they could provide evidence to show that the tenants were solicited to proceed with their application and so that the landlord could provide evidence with respect to "illegal activity" in the rental unit. I found that both of these issues were irrelevant to the application before me. It was pointed out to the landlord that if there is "illegal activity" being carried out in the rental unit, the landlord could give a Notice to End Tenancy under Section 47(1)(e) of the Act, but this is not a matter I have been designated to address.
- [7] The matters I have been designated to hear deal with whether the landlord has given a valid Notice to end the tenancy agreement under Section 49 of the Act and whether the landlord has given a valid Notice of Rent Increase under Section 42 of the Act. The landlord acknowledged that all of the Notices given by them with respect to these issues have been entered into evidence.
- [8] I found that an adjournment was not required to provide a fair opportunity for the parties to be heard and nor did I find an adjournment would contribute to a "consistent, efficient and just process". I also found the landlord had ample time between receiving the Application for Dispute Resolution documents and the date of the hearing to submit evidence. It was the evidence of the agent for the landlord that this evidence was not submitted because they hoped to reach a settlement with the tenants. One of the factors I have to consider when an adjournment is requested is the "the degree to which the need for the adjournment arises out of the intentional actions ... of the party seeking the adjournment." I find that the failure of the landlord to consider the possibility of failure in settling the issues between them, supports grounds for denying the request for an adjournment.

- [9] I also found that delaying the hearing would negate the objective of it being an “efficient” process and I also found that viewing the evidence the landlord advised they wished to submit would not contribute to a more “just” process and decision. I further found there was prejudice to the applicant in delaying knowing the outcome of his application for an order canceling the Notice to End Tenancy. As a result, I denied the application of the landlord for an adjournment.

ISSUES

- [10] The issues to be considered in this application are:
- (1) Has the landlord given a valid Notice to End the tenancy agreement under Section 49 of the Act?
 - (2) Has the landlord given a valid Notice of rent increase?
 - (3) Has the landlord breached the Act or the tenancy agreement?
 - (4) Is the tenant entitled a monetary order for over-payment of rent?

FACTS

- [11] The parties entered into a month-to-month tenancy agreement commencing 1 May, 2005. The rental unit is located in the Golden Crown Hotel, located at 116 West Hastings Street in Vancouver.
- [12] When the tenant moved into the rental unit his monthly rent was \$480.00, and in either April or May, 2006, his monthly rent increased to \$600.00/month. In the statement of facts presented into evidence by the tenant it shows his rent increased to \$600.00/month effective 1 April, 2006, but according to the receipts issued by the landlord he paid rent of \$480.00 for 12 months.
- [13] In a “Notice to all tenants” dated 27 December, 2006, the hotel owner wrote:
Due to plans to upgrade and improve our building, we must give notice to all tenants to vacate their rooms by March 31/2007. The building will undergo extensive renovations and will not be suitable for accommodation during the work. We are giving several months notice to allow you to find housing elsewhere.
- [14] On a receipt dated 31 January, 2007, the landlord acknowledged receiving from the applicant “Fifty Seven Hundred – sixty”, “total 12 month rent 480 x 12 month May 2005 to May 2006.” In a separate receipt dated 31 January, 2007, the landlord acknowledged receiving from the applicant “six thousand” dollars “ten months rent 600 x 10 month May 2006 to Feb 2007”, and in a receipt dated 2 February, 2007, the landlord acknowledged receiving “eighteen hundred dollars” “rent Feb, March, April (\$600 x 3 month).”

ANALYSIS

Order canceling the Notice to End Tenancy

- [15] Section 49 of the Residential Tenancy Act states:

...

- (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be
- (a) not earlier than 2 months after the date the tenant receives the notice,
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy
- ...
- (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:
- ...
 - (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - ...
- (7) **A notice under this section must comply with section 52** [*form and content of notice to end tenancy*]. [Emphasis added.]

- [16] Section 52 of the Residential Tenancy Act states:
In order to be effective, a notice to end a tenancy must be in writing and **must**
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) **when given by a landlord, be in the approved form.** [Emphasis added.]
- [17] The agent for the landlord acknowledged, at the hearing, that the only Notice to end tenancy given to the tenant was the hand-written "Notice" given on 27 December, 2006.
- [18] Section 68 of the Residential Tenancy Act states:
- (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that
 - (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
 - (b) in the circumstances, it is reasonable to amend the notice.
 - (2) Without limiting section 62(3) [*director's authority*], the director may, in accordance with this Act,
 - (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or

- (b) set aside or amend a notice given under this Act that does not comply with the Act.

[19] I find that the "Notice" given by the landlord is not an "effective" Notice because it is not in the approved form and it is fatal in its deficiency because it does not inform the tenants of their right to dispute the Notice or the time limit required for disputing a Notice to End Tenancy. Given that the landlord did not know he was required to use an "approved form" which contains information to the tenants of their right to dispute the Notice, I am not satisfied that the tenants knew, or should have known the information that was omitted from the notice and I therefore do not find it is reasonable to amend the Notice. I find the "Notice" given by the landlord is void from the beginning because of the fatal defects and I Order pursuant to Section 68(2) of the Act that the Notice is set aside and has no legal effect. Consequently, this tenancy agreement continues without all rights and obligations unchanged.

Order that the landlord comply with the Act or the tenancy agreement

[20] Section 41 of the Residential Tenancy Act states:

A landlord must not increase rent except in accordance with this Part.

[21] Section 42 of the Residential Tenancy Act states:

(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of rent increase must be in the approved form.

(4) If a landlord's notice of rent increase does not comply with subsections (1) and (2), the notice takes effect on the earlier date that does comply. [Emphasis added.]

[22] The agent for the landlord acknowledged that the only "Notice" of rent increase they have given to the tenant was the hand-written notice. I find this Notice is not in the "approved form" and it does not comply with Section 42 of the Act. I find it is implied in Section 42 of the Act if the Notice is given in the approved form, but is given earlier than permitted under the Act, or it has an effective date for the rent increase that is earlier than 3 months after the Notice of given, the Notice of Rent Increase is valid and takes effect, but if it is not in the approved form, it does not take effect. I find that by specifically amending defects under sub-sections (1) and (2) of Section 42, but not allowing for an amendment of a defect under sub-section (3), it shows an intention by the legislature that failure to give a rent increase in the "approved form" is fatal. I also find this is supported by the fact that the legislature allows a dispute resolution officer to amend defects as to form, in Section 68 of the Act, when a Notice to End Tenancy is not

\$600.00/month rent. The tenant has claimed over-payment of rent totaling \$1,320.00.

- [29] Section 67 of the Residential Tenancy Act states:
Without limiting the general authority in section 62(3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
- [30] Section 9.1(1) of the Residential Tenancy Act states:
The director may delegate to a person retained under section 9(2) any of the director's powers, duties or functions under this Act, ...

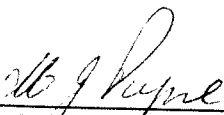
CONCLUSION

- [31] Having been delegated the power under Section 9.1 of the Act, I find that the landlord has breached Part 3 of the Residential Tenancy Act and the tenant has established his claim for over-payment of rent charges totaling \$1,320.00. If the tenant has made an additional \$120.00 payments that have not been claimed under this application, pursuant to Section 43(5) of the Act he may deduct the increase from rent payable to the landlord.
- [32] Having made the above findings, I Order, pursuant to Section 67 of the Act, that the respondent pay to the applicant:
- | | |
|---|----------------|
| In satisfaction of this claim: | \$1,320.00 |
| All of the fee paid under Section 59(2)(c): | <u>\$50.00</u> |
| | \$1,370.00 |
| | ===== |

It is further Ordered that this sum be paid forthwith.

- [33] The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.
- [34] Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Dated March 16, 2007.



M.J. Pyne
Dispute Resolution Officer