Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 795638

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

Between

S22 **Landlord(s),**

Applicant(s)

And

S22 **Tenant(s),**

Respondent(s)

Regarding a rental unit at: S22 North Vancouver, BC

Date of Hearing: September 13, 2012, by conference call.

Date of Decision: September 13, 2012

Attending:

For the Landlord: S22

For the Tenant: S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an additional rent increase.

The tenant and landlords attended the conference call hearing and were given the opportunity to present their testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to increase the tenants rent above the percentage allowed for 2012 as specified under the *Act.*

Background and Evidence

The parties agree that the tenants moved into the rental unit in December, 2000. The home was owned at that time by the current landlords' family. The current landlords' purchased the property in 2012 and entered into a new tenancy agreement with the tenant on May 01, 2012 for a fixed term lease for one year. This lease is due to expire on April 30, 2013. At the start of the tenancy in 2000, rent was $3,300.00 per month.

The tenant agrees that his rent has been increased three times during his tenancy with the previous landlords. The current rent is $4,187.65 which was increased on April 01, 2012.

The landlords have applied for a rent increase of 24 % or $1,012.35 to a total amount of $5,200.00. The landlord's calculations are in error and 24 percent of the current rent is actually $1,005.03. The landlord states that the rental property is below the current market rent in the geographical area. The landlord states that comparable rental properties in the area are between $5,000.00 and $6,000.00 per month. The landlords state that this rental property

S22

S22

r and the landscaping is provided by the landlord. The which does not include the unfinished basement which the tenants do not have access to. There is a laundry, a fenced in yard and the property is located in a good area close to amenities.

The landlord states that the rental property is a home S22 although it is rented by one family. S22

The landlord has provided advertisements for seven properties that the landlord states are in the same geographical area with similar amenities and are comparable properties. These advertisements show that the average price for these comparable properties is between $5,000.00 and $6,000.00 per month.

The tenant disputes the landlords claim. The tenant states that the houses the landlord has provide to show comparable houses in the market are all houses in different locations which are better locations then the tenants' rental house. The tenant states that their rental house is located S22 and they experience a lot of noise from traffic. Their rental does not have view of the city, the ocean or the mountains, the

landlords use their basement area for the landlords own storage purposes. And the house was renovated over 10 years ago before the tenants moved in. The tenants' points out that some of the houses provided by the landlord show newer renovations and some have city, ocean, harbour and mountain views. The tenant disputes that any of the properties shown by the landlord are comparable to the tenants' rental property.

The tenant states that the rent has already increased this year in April and the parties have entered into a fixed term tenancy which does not expire until April 01, 2013.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties in this matter. S. 43(3) of the *Act* allows a landlord to request the Directors approval of a rent increase that is greater than the amount calculated under the regulations. With this in mind I have considered the landlords request and reviewed the evidence provide to support this request.

I refer both Parties to the Residential Tenancy Policy Guidelines #37. Part of this guideline refers to s. 43(3) of the *Act* and states that the policy intent is to allow the landlord to apply for dispute resolution to increase the rent above the allowable amount only in "extraordinary" situations. What I have considered in making this decision is whether the landlord has an extraordinary situation that would warrant a rent increase of $200.30 per month. In making this decision I have considered the factor detailed on the landlords application that after the allowable annual rent increase, the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit;

The landlord has the burden of proof in this matter and is responsible for proving that the rent for the property is significantly lower than the current rent payable for similar units in the same geographic area. The landlord has provided what they consider to be

seven comparable properties. The landlords argue that these are comparable properties with a similar or smaller size, a similar age, and share similar community facilities.

I have reviewed the properties presented and find they are not in the same geographical area as the rented property and are at least three kilometers away from the rental property. Many of these properties have a city, ocean or mountain view; some have at least three of these views, while the rented property has no views. Some of these properties have a basement, two are fully furnished, three properties are larger than the rental property, and three have been newly or recently renovated.

I have also considered relevant circumstances of the tenancy. The tenancy has been in place since 2000 and the rent has only been increased three times. The latest increase took place in April 01, 2012 at 4.3 percent. The tenant argues that the landlord is not entitled to raise rent again as it an increase was given in April, 2012 and the tenants entered into a new fixed term tenancy at the monthly rent of $4,187.65. In addressing the tenants reasoning over the fixed term tenancy there is no provision under the Act to prevent the landlords applying for an additional rent increase during the fixed term of the tenancy or after the allowable rent increase has been imposed.

In the matter of whether or not the landlords have shown that the rent is significantly lower than comparable properties; I am not satisfied that the landlords have met the burden of proof to show that the rent is significantly lower than comparable properties in the same geographical area. I find the properties provided by the landlords are not in the same geographical area as the rental unit and most have different redeemable features as mentioned above to command a higher rent in those properties. Consequently the landlords' application for an additional rent increase is denied.

Conclusion

Due to the reasons above I HEREBY DISMISS the landlord's application for an additional rent increase.

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: September 13, 2012.

M. Coyne
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 796521

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

Between

Wall Financial Corporation, Landlord(s),

Applicant(s)

And

S22 **Tenant(s),**

Respondent(s)

Regarding a rental unit at: S22 Vancouver, BC

Date of Hearing: September 24, 2012, by conference call.

Date of Decision: October 11, 2012

Attending:

For the Landlord: S22 Agent for the Landlord

For the Tenant: S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Introduction

This hearing dealt with the Landlord's Application for an Additional Rent Increase, pursuant to section 43 of the *Residential Tenancy Act* (the "Act").

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Issues(s) to be Decided

After a rent increase permitted under the Act and Regulation, is the rent for the subject rental unit significantly lower than rent payable for other rental units similar to and in the same geographic area as the subject rental unit?

Background and Evidence

This tenancy began on March 1, 2009, with the parties entering into a written tenancy agreement. At the outset the monthly rent was $1,475.00, payable on the first day of the month.

In 2010 the Landlord raised the rent to $1,522.00, and in 2011 the rent increased to $1,557.00. In evidence the Landlord submitted copies of the Notices of Rent Increase, issued in accordance with the Act and regulation.

In this Application, the Landlord is requesting an additional rent increase totalling 34.3%, comprised of the allowed increase of 4.3% plus 30%, to adjust the monthly rent to $2,091.00 for the subject rental unit.

There are several grounds upon which a landlord may request an increase beyond the limits set in the Act and regulation.

The Landlord here has put forward one reason for the request for an additional rent increase. The Landlord claims that when comparing the subject rental unit with similar rental units in the same geographic area, the rent is significantly lower for the subject unit.

The parties provided evidence and testimony that the subject rental unit is a two bedroom, two bathroom condominium of about 930 square feet in size. It is on the second floor of the building (which is 9 floors tall, containing 36 units), and has an in-suite laundry. It has a large deck and solarium. Included in the rent is water and access to a gym and sauna in the building. The subject rental unit is approximately a 10 minute walk to Robson Street and a 5 minute walk to English Bay, and is located in the west end of downtown Vancouver.

Although the Agent for the Landlord did not have the exact date the building opened, the parties agreed that in 2008 the entire building was renovated. Furthermore, over the last year there have been extensive upgrades made to the lobby of the building to make it look contemporary. The Landlord provided evidence showing these upgrades cost over $169,000.00. The subject rental unit and all other units in the building are captured under a rental covenant on the title of the property. In other words, all units in the building must be rented.

There has been one prior hearing between the parties, in July of 2012, which involved the Landlord wanting to end the tenancy to perform renovations in the rental unit. The tenancy did not end, as it was found the Landlord could perform the renovations without the rental unit being vacate, and the Notice to End Tenancy was cancelled. According to the parties, these proposed renovations have not begun yet.

For comparison purposes the Landlord entered into evidence a spreadsheet showing 10 comparable units; two of which are in the same building as the subject rental unit, two of which are nearby on the same street, and the balance of which are in relatively the same geographic area.

The Landlord has calculated that the price per square foot of the subject rental unit is $1.67 per square foot, while the average of the comparable units is $2.36. The average monthly rent of the comparable units is $2,041.55. The Landlord alleges that at the average rates for square footage the subject rental unit would rent for $2,194.00 per month in the current market, nevertheless, as described above, the Landlord is requesting an increase to $2,091.00 per month.

The comparable units brought forward by the Landlord are all within one to two kilometres of the subject rental unit. All of the comparable rental units are located in downtown Vancouver within a short walk to English Bay, or Robson and Burrard streets.

The comparable units range in size from 800 square feet at $1,900.00 per month to 1147 square feet at $2,900.00 per month. I note the latter unit has two bedrooms plus a den. The five comparable units with in-suite laundry range in rent from $1,900.00 to $2,900.00 per month, and again the latter unit is the one with a den.

All of the comparable units, except one, have access to a gym or fitness centre. All the comparable units are close to the shopping and amenities of downtown Vancouver.

The Landlord has supplied the online advertisements for the comparable units.

In reply to the Landlord's Application, the Tenant argues that the government has seen fit to regulate rents in the province. The Tenant argues that the Landlord should not be allowed to increase the rent beyond the increase already allowed by the legislation.

The Tenant provided information regarding four different comparable units. The information for one of these comparable units is limited, but indicates a 2 bedroom unit starts at $1,650.00 per month in this building.

The Tenant has provided one other two bedroom and two bathroom unit renting at $1,650.00 per month with 845 square feet of area.

The other comparables provided by the Tenant are two bedroom, one bathroom units; one for $1,725.00 per month with 1110 square feet in area, and the second one at $1,500.00 per month for 785 square feet. I note that the comparable unit at $1,750.00 per month is not located within the same geographic area as the subject rental unit, as it is not in the west end of Vancouver.

Little other comparable information is provided in the advertisements submitted in evidence by the Tenant.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

As stated by the Tenant during the hearing, in British Columbia rent increase rates are controlled by legislation. For example, in this case the Landlord is allowed under the Act and regulation to raise the rent for the rental unit by 4.3% in 2012, or to approximately $1,623.00. I note the allowed rental increase for 2013 has been set at 3.8%.

If done in accordance with the Act and regulation, a renter may not dispute a rent increase.

However, under section 43 of the Act, the Landlord is allowed to request an additional rent increase beyond the percentage allowed by the Act and regulation, by making an Application requesting an additional rent increase such as this one. The Tenant is able to dispute a request for an additional rent increase and that occurred here.

There are several grounds upon which a landlord might request an increase, such as significant repairs are required, or that the landlord is suffering a financial loss even after the allowed statutory increase. As stated above, the Landlord here is requesting an additional rent increase on the ground that the subject rental unit has significantly lower rent than similar units in the same geographic area.

After examining and assessing the Application and supporting material provided by the Landlord, the evidence of both parties regarding comparable units, and the Tenant's submissions, **I find that the Landlord has proven on a balance of probabilities that the current rate of rent for the subject rental unit is significantly lower that the current rent payable for similar units in the same geographic area.**

In making this assessment and decision I have eliminated the Landlord's two largest comparable rental units as I found these were not similar enough to provide accurate comparisons, as these included a den as well as two bedrooms and two bathrooms. I also did not include a one bathroom unit, as this was not an appropriate comparable.

Likewise, I have eliminated three of the rental units offered in evidence by the Tenant, as two of these did not have two bathrooms, and one was not in the same geographic area.

When the monthly rents of the nine appropriate comparable rental units supplied by both parties are taken together and averaged the result is **$1,861.11** per month in rent. This amounts to a rental increase of 19.53%, including the allowed increase of 3.8% for 2013, for the subject rental unit. The difference in rental rates between the current rent of $1,557.00 and $1,861.11 is $304.11. Subject to my directions below, I find this a reasonable amount to increase the rent by.

I allow the Landlord to increase the rent to **$1,861.11 per month, to be phased in over the next two years**. I order a two year "phase in" period as I find this is a significant increase in rent in relation to the current amount paid.

I order that the Landlord may increase the monthly rent by $152.06 to $1,709.06 in 2013. No sooner than twelve months after this first increase, the Landlord may increase the rent by $152.05 to $1,861.11.

For each phase of the increase allowed, the Landlord must provide the Tenant with a Notice of Rent Increase in the approved form, provide the required three month notice period, and must serve the Tenant with a copy of this entire Decision along with each Notice of Rent Increase.

Conclusion

I find the Landlord had sufficient evidence to prove the rent for the subject rental unit is significantly lower than comparable rental units.

I allow the Landlord an additional rent increase, in the amount of $304.11 per month for the subject rental unit, to be phased in over two years as described above.

The Landlord must serve the Tenants with a Notice of Rent Increase in accordance with the Act, along with a copy of this entire Decision, granting the additional rent increase.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 11, 2012.

E. Letain
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Special Instructions

FILE #806138

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 806138

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

Between

S22 **Landlord(s),**

Applicant(s)

And

PODOLLANS CONSTRUCTION, Tenant(s),

Respondent(s)

Regarding a rental unit at: S22 Vernon, BC

Date of Hearing: April 15, 2013, by conference call.

Date of Decision: April 15, 2013

Attending:

For the Landlord: S22 Landlord

For the Tenant: S22 , Tenant
S22 Occupant
S22 Poverty Advocate

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC O

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 14, 2013, by the Tenant to cancel the Notice issued for cause and to clarify that the effective date of that Notice is to be April 30, 2013.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. What is the effective date of the 1 Month Notice to end tenancy for cause issued March 6, 2013?
2. Is the Tenant wishing to dispute the Notice?

Background and Evidence

The Tenant submitted a copy of the 1 Month Notice issued March 6, 2013, as documentary evidence.

The parties confirmed they entered into a written month to month tenancy agreement that began on approximately December 1, 2012. Rent is payable on the first of each month in the amount of $800.00 and on or before December 1, 2012, the Tenant paid $400.00 as the security deposit.

The Tenant testified that she received the Notice March 6, 2013, and she was not disputing the Notice because she plans to move out of the rental unit by April 30, 2013. She did want to confirm that the effective date of the Notice was April 30, 2013.

The Landlord stated that he was not interested in settling this matter to end the tenancy April 30, 2013. That is because the Tenant has not paid her rent so he has filed his own application for an earlier possession date based on a 10 Day Notice he subsequently served.

Analysis

Section 47(2) of the Act provides that a Notice issued for cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Section 53(2) of the Act provides that incorrect effective dates of Notices to End Tenancy are automatically changed to the earliest date that complies with the Act.

The Notice was served upon and received by the Tenant on March 6, 2013. Therefore, I find the 1 Month Notice to End Tenancy that was issued on March 6, 2013, would have an effective date of **April 30, 2013**. In order to be effective March 31, 2013, the Notice would have had to been issued and served on or before February 28, 2013.

The Tenant did not wish to dispute the Notice. Accordingly, I dismiss her application.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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 15, 2013

L. Bell, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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FILE #806141

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 806141
Additional File(s):806139

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

Between

S22 **Landlord(s),**
Applicant(s)/Respondent(s)

And

I S22 **Tenant(s),**
Applicant(s)/Respondent(s)

Regarding a rental unit at: S22 Vernon, BC

Date of Hearing: April 15, 2013, by conference call.

Date of Decision: April 15, 2013

Attending:

For the Landlord: S22

For the Tenant: No One

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF
CNR O

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on March 19, 2013, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on March 14, 2013, seeking an Order to cancel the notice to end tenancy for unpaid rent and for other reasons.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on March 25, 2013. Canada Post tracking information was provided in the Landlord's testimony.

Despite this hearing being convened to hear matters pertaining to the Tenant's application; no one appeared at the hearing on behalf of the Tenant.

Issue(s) to be Decided

1. Has the Landlord proven service of the hearing documents in accordance with section 89 of the Act?
2. If not, should the Landlord's application be dismissed with or without leave to reapply?
3. Should the Tenant's application be dismiss with or without leave to reapply?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the move in condition inspection report form; text messages; and her written statement.

The Tenant submitted documentary evidence which included, among other things, copies of: the 10 Day Notice to end tenancy issued March 10, 2013.

The Landlord testified that she lives on the main floor of the house and the rental unit is located in the basement. She said that on March 21, 2013 she saw the Tenant moving out. On March 23, 2013, she noticed that there were still some of the Tenant's possessions left inside the unit and through text messaging with the Tenant she confirmed he had moved out. The Tenant had indicated in his text message that he would return to pick up a few possessions but he never did. The Landlord confirmed she re-gained possession of the unit as of March 23, 2013.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on March 25, 2013, four days after she saw him move out and two days after she confirmed through text messaging with the Tenant that she had regained possession.

Analysis

Landlord's Application

I accept that the Landlord has regained possession of the unit as of March 23, 2013.

Section 89 of the Act provides that if documents are being served via registered mail they must be sent to the address where the Tenant resides.

In this case, because the evidence supports the Landlord served the hearing documents several days after the Tenant vacated the rental unit I find that service has not been effected in accordance with the Act. Accordingly the Landlord's application for a Monetary Order is dismissed, with leave to reapply.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenant called into the hearing during this time.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any submissions from the applicant Tenant I order the application dismissed without liberty to reapply.

Conclusion

The Landlord's application is HEREBY DISMISSED, with leave to reapply.

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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 15, 2013

L. Bell, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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FILE #249344

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 249344
Additional File(s):249375

In the matter of the *Manufactured Home Park Tenancy Act,* SBC 2002, c. 78, as amended

Between

S22

Applicant(s)/Respondent(s)

And

S22

Applicant(s)/Respondent(s)

Regarding a rental unit at: S22 Salt Spring Island, BC

Date of Hearing: May 08, 2013, by conference call.

Date of Decision: May 09, 2013

Attending:

For the Owner:

For the Occupants: S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC O FF
MNDC OLC RPP O FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed under the *Residential Tenancy Act* by the Owners and the Occupants.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the parties entered into a tenancy agreement for occupation of a Manufactured Home Park pad or site?
2. If not, does this matter fall within the jurisdiction of either the *Manufactured Home Park Tenancy Act* or the *Residential Tenancy Act*?

Background and Evidence

During the course of this proceeding the parties provided affirmed testimony confirming the terms of their agreement. The following facts were confirmed and were not in dispute.

The property in question is a multi-acre property S22 S22 Ownership of the property has changed hands S22 since the occupants moved onto the property.

S22

The Occupant made his arrangements directly with the Tenant. The Occupant paid rent directly to the Tenant from S22 When the Tenant moved out S22 the Occupant began paying $148.00 per month directly to the Owner(s) to continue his occupation of the property. The monthly fee was raised to $200.00

S22

S22

S22

The parties affirmed they had a verbal agreement to allow occupation of S22 S22 There was never an agreement about defined borders of land that would be occupied and no permanent fixtures or pads were installed for permanent occupation. The Occupants never paid a security deposit; have never paid the Owners for utilities; have never contributed to property taxes; have not paid for maintenance of the property;

S22

S22

The parties never discussed or agreed to specific terms about the occupation even though the Occupant(s) has resided on the property for S22

Analysis

Residential Tenancy Policy Guideline 9 entitled *Tenancy Agreements and Licenses to Occupy* states that it "is intended to help parties to an application understand issues that are *likely* to be relevant". The two page document is intended to provide some general guidance to a plethora of circumstances however cannot possibly be expected to apply to all circumstances, arrangements or agreements. This guideline is accessible on the internet at http://www.rto.gov.bc.ca

While the guideline factors have been considered in this decision, ultimately, the parties must show how the arrangement they have is one of a tenancy pursuant to either the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*, not the guidelines.

In this case, S22 are owned by the Occupants and not the property Owners, this occupation agreement does not meet the requirements to fall under the *Residential Tenancy Act*, as applied.

Section 2 of the *Manufactured Home Park Tenancy Act* states: "Despite any other enactment but subject to Section 4, this *Act* applies to tenancy agreements, manufactured home sites and manufactured home parks." In order to have the *Manufactured Home Park Tenancy Act* apply to the relationship between these two parties all three of these components must be a constituent of that relationship.

Section 1 defines "tenancy agreement" as an agreement, express or implied, between a landlord and a tenant respecting possession of **a manufactured home site, use of common areas and services and facilities.** This section also defines "tenancy" as a tenant's right to possession of **a manufactured home site** under a tenancy agreement [My emphasis added].

Section 1 of the Act defines a manufactured home site as "a site in a manufactured home park, which is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home."

Notwithstanding the Occupants' submission S22 I find that the permission granted under their verbal agreement does not identify a specific site of the property as a manufactured home site. Rather, their agreement pertains to occupation of an area of undeveloped property S22

S22

Black's Law Dictionary, 7th Edition defines Licence as: "a revocable permission to commit some act that would otherwise be unlawful; esp., an agreement that it will be lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal."

Based on the aforementioned, I find the Occupants have not been granted possession of a manufactured home site and that they entered into an agreement with the Owner(s) for a license for use and not a tenancy agreement as defined under the *Manufactured Home Park Tenancy Act*. As licenses for use do not meet the definition of a tenancy, under the *Act*, I find the *Manufactured Home Park Tenancy Act* does not apply to these matters.

Conclusion

As a result of my findings above, I decline jurisdiction to resolve these disputes.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: May 09, 2013

L. Bell, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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  Fact Sheet RTB-108: *Enforcing a Monetary Order*

- How and when to have a decision or order corrected:
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- How and when to have a decision or order clarified:
  Fact Sheet RTB-141: *Clarification of a Decision or Order*

- How and when to apply for the review of a decision:
  Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
  (Please Note: Legislated deadlines apply)

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Pages 35 through 39 redacted for the following reasons:
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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 805240

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

Between

S22 **(AGENT), Landlord(s),**
Applicant(s)

And

S22 **Tenant(s),**
Respondent(s)

Regarding a rental unit at: S22 West Vancouver, BC

Date of Hearing: May 15, 2013, by conference call.

Date of Decision: May 15, 2013

Attending:

For the Landlord: S22 , Landlord
S22 Agent

For the Tenant:
S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on February 19, 2103, to obtain a Monetary Order for; unpaid rent; other reasons; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord filed this application within the timeframes stipulated in the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: an unsigned tenancy agreement; his written statement; Canada Post registered mail tracking information; e-mails between the parties; and a monetary order worksheet.

The following facts were confirmed during this proceeding and were not in dispute:

- The parties originally entered into a fixed to tenancy agreement that began on May 5, 2009 and was set to end on May 31, 2010;
- Rent was payable on the first of each month in the amount of $5,000.00
- The Tenant paid $2,500.00 as a security deposit on or before May 5, 2009;
- The parties attended a walk through inspection on May 5, 2009 however no move in condition inspection form was completed;
- The Tenant vacated the property on or before February 15, 2013;
- The parties attended a move out inspection on February 15, 2013, and signed off stating everything was okay with the rental unit;
- All parties agreed that another tenant would commence a new tenancy and she took possession of the rental unit on February 15, 2013 after completion of the inspection;
- As per agreement with the Landlord the new tenant wrote this Tenant a cheque in the amount of $2,500.00 as her payment of the security deposit and as refund to this Tenant's security deposit;
- The Landlord credited the new tenant as paying a security deposit of $2,500.00.

The Landlord and his Agent submitted that due to some mix up the Tenant's post dated cheques for rent payments for November 2010, December 2010, January 2011, and February 2011 were never cashed. They have recently attempted to collect the past due rent from the Tenant however she has not provided them with the payment.

The Tenant confirmed that she has not obtained proof that the payments were withdrawn from her account. She argued that the Landlord's application was filed too late because he made his application on February 19, 2013, which is more than two years since her tenancy ended on February 15, 2013. She noted that the Landlord waited almost a year before he first contacted her about this situation.

The Landlord and his Agent argued that the tenancy did not end until the end of February 2011 because they had an agreement that the Tenant was responsible for February's rent and because they did not enter into a written tenancy agreement with the new tenant until March 1, 2011. They confirmed that they did not provide a copy of the new tenancy agreement as evidence.

In closing, the Landlord confirmed that the new tenant took occupancy of the rental unit on February 15, 2011 after the Tenant's move out inspection was completed and she did not begin paying rent until March 1, 2011. When asked why he delayed in making

this application the Landlord stated that they were friends and friends do not go after friends for money right away.

Analysis

Section 44 (1)(d) of the *Act* stipulates that a tenancy ends when the tenant vacates or abandons the rental unit.

In this case, the undisputed evidence is the Tenant vacated the rental unit on or before February 15, 2011; the parties attended a move out inspection on February 15, 2011; and the keys and possession of the rental unit were handed over to the new tenant on February 15, 2011.

Based on the foregoing, and notwithstanding the Landlord's argument that the new tenant did not begin to pay him rent until March 1, 2011, I find that this tenancy ended on February 15, 2011, in accordance with section 44(1)(d) of the *Residential Tenancy Act*.

Section 60(1) of the *Act* stipulates that if this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned [emphasis added].

Therefore, I find that the Landlord had to file his application on or before February 14, 2013. In this case the Landlord filed his application on February 19, 2013, which I find to be outside of the timeframes stipulated in Section 60(1) of the *Act*. Accordingly, I dismiss the Landlord's application, without leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

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: May 15, 2013

L. Bell, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 800374

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

Between

S22 **Landlord(s),**

Applicant(s)

And

S22 **Tenant(s),**

Respondent(s)

Regarding a rental unit at: S22 Vancouver, BC

Date of Hearing: December 20, 2012 and February 08, 2013, by conference call.

Date of Decision: February 08, 2013

Attending Dec. 20, 2012

For the Landlord:

For the Tenant:

Attending Feb. 8, 2013 S22

For the Landlord:

For the Tenant:

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI

Preliminary Issues

Upon review of the application for additional rent increase the Landlord requested to amend her application to reduce the amount of rent increase she was seeking to $1,400.00 per month from $1,500.00 per month. She stated that she completed the application indicating that $1,500.00 was market value rent, not the rent increase they were seeking.

Based on the submissions of the Landlord I find that the request to amend the application would not prejudice the Tenant, rather it would benefit him. Therefore, I grant the amendment pursuant to section section *64 (3)(c)* of the *Act.*

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 30, 2012, by the Landlord to obtain authorization for an additional rent increase.

The hearing convened on December 20, 2012 at 1:00 for ten minutes and was adjourned to allow the Tenant an opportunity to submit evidence in response to the Landlord's claim. The hearing reconvened for the present session on February 08, 2013 at 9:00 a.m. for sixty minutes.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted an Order to allow an additional rent increase?

Background and Evidence

The Landlord submitted 17 pages of documentary evidence which included, among other things, copies of: a spreadsheet listing 13 rental units and the amount being charged for rent; and advertisements relating to the rental units listed on the spreadsheet.

The Tenant submitted two packages of documentary evidence consisting of 24 and 47 pages which included, among other things, copies of: a spreadsheet listing 21 rental units and advertisements of rental units printed from the internet.

The parties agreed that the Tenant has occupied the rental unit since December 1, 2001, under the following two consecutive tenancy agreements:

1) A fixed term agreement that began on December 1, 2001 and switched to a month to month tenancy agreement after November 30, 2002 for the monthly rent of $900.00. The Tenant paid a security deposit of $450.00 on November 21, 2001.
2) A fixed term agreement that began on November 1, 2008 that switched to a month to month tenancy after October 31, 2009 with the following rent schedule:
    a. November 1, 2009 – January 31, 2009 at $985.00 per month
    b. February 1, 2009 – October 31, 2009 at $1,021.00 per month

Then in September 2010 the Tenant was issued a notice of rent increase raising his rent from $1,021.00 to the current rent of $1,044.00 per month effective February 1, 2011.

The rental property is an apartment located on the 9th floor of a 29 story strata building that has 238 apartments. The building is located in the downtown core of Vancouver and was built in 2000. The unit is approximately 540 sq ft, and has one bedroom, one bathroom, in-suite laundry, one parking stall, 24 hour security and concierge service, and access to the on sight pool and gym. All appliances (washer, dryer, fridge, stove, dishwasher, and microwave) are included. The Tenant rented the unit unfurnished and is responsible to pay the electricity, cable, and telephone utilities.

The Landlord submitted that: the tenancy includes access to storage; the Tenant was the first person to occupy the new unit; and the Landlord pays the monthly strata fees. The Landlord stated that the building was in the down town core in the Yale town area.

The Landlord advised that she has managed this unit since September 2012. Upon taking over the unit she met with the Tenant and conducted an inspection during which there were no issues raised and nothing functionally wrong with the unit. The owner purchased the unit new and has only had one other property management company look after the unit from 2000 to August 2012.

The Landlord submitted that the additional rent increase should be granted for the following reasons: (a) it has been a long term tenancy of over 12 years; (b) rent has been kept low and only increased a couple of times even though the owner had requested that her previous property manager keep rent at market value; (c) strata fees have increased from $125.00 to $270.00 per month; (d) and property taxes have increased to $1,216.00, the strata fees and property taxes amount to one third of the rent; and (e) the owner had to pay $2,083 into the strata fund for the external renewal fund.

The Landlord acknowledged that she did not make an application for a rent increase for any other reason other than the rent is lower than market value. She also confirmed that she did not indicate anywhere in her application or evidence that she would be supporting her request for a rent increase based on increased operating costs.

The Landlord pointed to her documentary evidence and noted that the comparable units were advertised for rent at the time she made her application. She stated that the most similar units are the three that were advertised in the Tenant's building. She acknowledged that two are being rented fully furnished and include utilities however those rents are substantially higher at $1,895 and $2,000 per month than the $1,400.00 they are seeking. The other unit is similar but larger at 605 sq ft, is not furnished, but is $1,495.00 per month.

The Landlord submitted that the rest of her comparables are within a 2 km radius and all are above $1,500.00 except for one unit that is $1,395.00 which is smaller at 527 sq ft. The Landlord acknowledged that she has not been inside any of the comparable units and has only seen photos if posted on the advertisement. She argued that the Tenant's rent has been kept low for several years allowing him to save thousands of dollars over the twelve year rental period.

The Tenant advised that his unit does not include storage and that he was not the first person to occupy the rental unit as there was a tenant prior to him. He disputes the rent was kept low and argued that he assumed that the professional property management company was doing their job and increasing his rent based on market values. He in turn did what was required and provided the management company twelve post dated

cheques each year and has been a good tenant. He recalls that he may have signed annual tenancy agreements but did not have those records in front of him during this proceeding. He stated that he plans his expenses for the year based on his rent and cost of living increases. He argued that it would be unfair to increase his rent all at once when the property management company should have been increasing his rent gradually over the years and have on occasion.

In reviewing the comparable units provided by the Landlord he pointed out that units on lower floors would be cheaper than higher units because of the noise levels. He stated that his unit is on a busy major street that has a lot of street noise from traffic and people screaming all night long. He acknowledged that noise comes with city living and should be expected but that the noise would be at a lower volume for the higher units. He noted that there are several clubs and night life around and stated that units within a 2 km radius would have similar access to geographic amenities. His unit has views of the downtown core while some of the Landlord's samples would have views of Yale town and the bay.

The Tenant argued that it would be difficult to find an exact match to his unit unless it was located on his floor. He pointed to his evidence and noted how those comparables have rents ranging from $800.00 to $1,095.00. Specifically he noted that one unit was $995.00 and included all utilities and a view of the bay. Another had access to a pool and was still rented for a lower amount.

In closing the Landlord stated that the Tenant has been a very good tenant with no issues. She argued that 13 of the 21 comparables submitted by the Tenant are located in the west end and not the downtown core, many do not have the size listed, 9 do not have in suite laundry, 5 do not include parking, and some are in buildings that are over 30 years old. She argued that she provided 3 listings of significantly similar units in the exact same area as they are in the same building and their rent ranges from $1,495.00 to $2,000.00.

The Tenant disputed the use of the units in his building arguing that furnished units cannot be used as comparables because there is no way of knowing the quality of and value placed on the furnishings. Furthermore they include the cost of utilities which his rent does not. Also, he should not have to suffer a large increase simply because a professional property manager did not do their job and increase his rent in accordance with the annual cost of living.

Analysis

The Landlord confirmed that she did not make application for an additional rent increase on the grounds of increased operating costs and that she did not provide the Tenant information about increased costs prior to her oral submission. Accordingly, I will not consider the evidence relating to increased costs as it does not pertain to this application and the Tenant was not privy to that information in time to prepare a response.

The Landlord has made application for an additional rent increase pursuant to Section 43(3) of the Act and section 23(1) of the regulation. Section 23 (1) (a) of the regulation provides that a landlord may apply under section 43 (3) of the Act *[additional rent increase]* if after the rent increase allowed under section 22 *[annual rent increase]*, the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as, the rental unit.

The burden of proof of the market value rent lies with the Landlord who has to meet the high statutory requirement of proving that rent being charge for similar units in the same geographic area are significantly higher than the Tenant's rent. Section 37 of the *Residential Tenancy Policy Guideline* # 37 stipulates that:

- An application must be based on the projected rent after the allowable rent increase is added; and
- Additional rent increases under this section will be granted only in **exceptional circumstances**; and
- "Similar units" means rental units of comparable size, age (of unit and building), construction, interior and exterior ambiance (including view), and sense of community; and
- The "same geographic area" means the area located within a reasonable kilometer radius of the subject rental unit with similar physical and intrinsic characteristics. The radius size and extent in any direction will be dependent on particular attributes of the subject unit, such as proximity to a prominent landscape feature (e.g., park, shopping mall, water body) or other representative point within an area.

In this case the current monthly rent is $1,044.00 and after the 2013 rent increase of 3.8% allowed under the Regulation is applied the monthly rent would be **$1,083.67**.

When determining the existence of exceptional circumstances it is not sufficient for a landlord to base their claim on the argument that the rental unit has a significantly lower

rent that results simply from the recent success at renting out similar units at a higher rate. To determine the exceptional circumstances I must consider the relevant circumstances of the tenancy, the duration of the tenancy, and the frequency and amount of rent increases given during the tenancy. It is not exceptional circumstances if a landlord fails to implement an annual allowable rent increase.

In this case the Tenant has occupied the rental unit since December 2001, (over 12 years). The unit was managed by the same professional property management company from December 2001 to September 2012 after which the current property management company was hired. The Landlord's application for an additional rent increase was filed on October 30, 2012.

The evidence supports that rent began at $900.00 and has been increased three times, (November 1, 2008, February 1, 2009, and February 1, 2011) raising it to $1,044.00 per month. Despite the rental property being managed by a professional property management company from the start of the tenancy, annual rent increases were not issued or implemented. The Landlord submitted that the owner had wanted rent to remain at market value; however, her previous property management company did not comply by issuing annual rent increases.

Based on the foregoing, I find there to be insufficient evidence to prove the existence of exceptional circumstances that caused rent to remain artificially low. Rather, I find that the rent is at the current amount simply because the owner allowed the prior property management company to ignore annual rent increases and issue sporadic increases. It was not until recent months that the owner felt the need to increase her rental income and began to look at how her property was being managed.

For examples of similar units the Landlord relies on advertisements of units available for rent during the time she completed her application. She pointed to three units that would be considered significantly similar as they are located in the same building. The Tenant disputes the Landlord's evidence arguing that the Landlord provided samples of two units that are rented fully furnished and include utilities while the last remaining unit was larger than his unit. The advertisement for the larger unit does not indicate which floor it is located on so he argued that it may be in a higher unit that does not have street or traffic noise, as his unit does, and it has in suite storage.

Notwithstanding the Landlord's submissions, I accept the Tenant's argument that they do not know the value placed on furnished units, and they do not know the views or level of noise each comparable unit would have. While both parties provided samples of units within a 2 km range I accept that some of the Tenant's samples may fall outside

the down town core. That being said, I find there is insufficient evidence to prove the value placed on the cost of utilities or furnishings or the fair market value of the three significantly similar units in comparison to the Tenant's unit.

Based on the aforementioned, I find there to be insufficient evidence to meet the high standard of proof required to prove the presence of exceptional circumstance which kept the rent artificial low. Furthermore, there is insufficient evidence to prove the actual market value rent of similar units that are located in the same geographic area. Accordingly, I find the Landlord's application must fail.

Conclusion

The Landlord has not met the burden of proof required for this application. Therefore, I DISMISS the Landlord's application.

The Landlord is at liberty to issue the required 3 month notice, on the prescribed form, if they wish to increase the Tenant's rent in accordance with the legislated amount for 2013 at 3.8 %.

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: February 08, 2013

L. Bell, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Special Instructions

FILE #800833

Fax the ☐ Applicant ☐ Respondent ☐ decision ☐ MN ☐ OP

Party: Click here to enter text.

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☐ There are multiple ☐ Applicants ☐ Respondents

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 800833

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

Between

RE/MAX TUMBLER RIDGE REALTY, Landlord(s),

Applicant(s)

And

S22 **Tenant(s),**

Respondent(s)

Regarding a rental unit at: S22 Tumbler Ridge, BC

Date of Hearing: February 20, 2013, by conference call.

Date of Decision: February 20, 2013

Attending:

For the Landlord

S22

For the Tenant:

S22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O

Preliminary Issues

On January 23, 2013, the Landlord submitted additional evidence by faxing 48 pages to the *Residential Tenancy Branch* "evidence fax" number. This evidence included a copy of the original application with the words "AMENDED – JANUARY 18, 2013" written across the top and two additional check marks on the second page of the application to request to keep the security deposit and recover the filing fee.

The *Residential Tenancy Branch Rules of Procedure # 2.5* stipulates that if the original application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application that was subsequently filed must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding [emphasis added].

In this case the Landlord did not file a revised application; rather; they submitted evidence, via the evidence fax machine, which included a copy of the original application they manually amended. Therefore, I cannot amend the Landlord's application during this proceeding to include a claim for damages or to keep the security deposit for damages. That being said, this does not prevent the security deposit being offset against a monetary award issued as a result of the original application, pursuant to section 72(2)(b) of the Act. The Landlord is at liberty to file another application to seek recovery for any damages or losses incurred and not claimed in the initial application.

The Landlord had indicated on their original application, in the notes written in the details of the dispute that they were requesting to recover the cost of the filing fee; therefore, the Tenant was made aware of the Landlord's request in the initial application and would not be prejudiced by the Landlord's request to amend the application. Based on the aforementioned I approve the Landlord's request to amend the application to

include the request to recover the cost of the filing fee, pursuant to section *64 (3)(c)* of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 14, 2012, by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: faxed photographs; a statement of events; a written statement; a copy of the application with the words "amended" written across the top; move in and move out condition inspection report forms; and the tenancy agreement. The Tenant did not submit documentary evidence.

The parties entered into a month to month tenancy agreement that began on July 1, 2011. Rent was initially payable on the first of each month in the amount of $1,500.00 and was later increased to $1,564.50 per month. On July 1, 2011 the Tenant paid $725.00 as the security deposit and although a pet deposit was required it was never paid. The parties attended and signed the move in inspection report form on July 1, 2011. The Tenant refused to take part in the move out inspection even after being issued a final written notice of inspection. S22 provided their forwarding address on December 2, 2012 at 8:38 p.m. through S22 .

The Landlord stated that on November 14, 2012 the Tenant informed them of their plans to end their tenancy effective December 1, 2012. Written notice to end the tenancy was received later that same day. The Landlord informed the Tenant of their requirement to vacate the property on the last day of the rental month; however, the Tenant did not vacate the property until December 1, 2012 and did not pay rent for December.

The Landlord appeared at the rental unit on November 30, 2012 at 6:00 p.m. to conduct the move out inspection, as scheduled; however, the Tenants were not finished their move and had not cleaned the unit. The Landlord said she explained overholding and requested that they call when they were completed so they could conduct the move out inspection and retrieve the keys. On December 1, 2012, at 9:23 p.m. the Landlord received a S22 message stating the Tenants were out of the unit and the keys were left inside. A Notice of final opportunity to attend move out inspection was post to the Tenant's door on December 1, 2012. The Landlord received another S22 message on December 2, 2012 at 8:38 p.m. with the Tenant's forwarding address.

The Landlord is seeking compensation for loss of December 2012 rent because the Tenant did not provide sufficient notice to end the tenancy and they were not able to re-rent the unit until January 1, 2013.

The Tenant began by stating they vacated the property by November 30, 2012 and not December 1, 2012. He confirmed providing notice to end his tenancy on November 14, 2012.

S22 confirmed that they did not vacate until December 1, 2012. She also acknowledged that the Landlord informed them of overholding and requested that they call to let her know when they were out so they could schedule the inspection. They did not call and instead they sent the S22 messages as stated by the Landlord.

In closing the Tenant stated that he was not disputing the Landlord's claim for December 2012 rent. He submitted that he attempted to pay the rent but the Landlord refused to accept his payment and decided to come to arbitration instead.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7

and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45(1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is 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.

In this case the Tenants provided their notice to end tenancy on November 14, 2012, which means their tenancy would not end until December 31, 2012, in accordance with section 45(1) of the Act, as listed above.

The evidence supports the Tenant vacated the property December 1, 2012, without paying the December 1, 2012 rent, as required under section 26 of the Act. This breach caused the Landlord to suffer a loss of rental income for December 2012 in the amount of $1,564.50. Based on the foregoing, I find the Landlord has met the burden of proof to claim a loss and I award them **$1,564.50.**

The Landlord has been successful with their application; therefore I award recovery of the **$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of December 2012 Rent	$1,564.50
Filing Fee	50.00
SUBTOTAL	$1,614.50
LESS: Security Deposit $725.00 + Interest 0.00	- 725.00
Offset amount due to the Landlord	**$ 889.50**

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$889.50.** This Order is legally binding and must be served upon the Tenant. In the event the Tenant

does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: February 20, 2013

L. Bell, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Special Instructions

FILE #805554

Fax the ☐ Applicant ☐ Respondent ☐ decision ☐ MN ☐ OP

Party: Click here to enter text.

Fax #: Click here to enter text.

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 805554

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

Between

S22 **Tenant(s),**

Applicant(s)

And

RED DOOR HOUSING SOCIETY and S22
(AGENT), Landlord(s),

Respondent(s)

Regarding a rental unit at: S22 Surrey, BC

Date of Hearing: April 09, 2013, by conference call.

Date of Decision: April 09, 2013

Attending:

For the Landlord:

S22

For the Tenant:

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O MT CNC

Preliminary Issues

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

The Tenant has filed seeking more time to make their application to cancel the notice to end tenancy issued for cause. The Notice was served to the Tenant on March 4, 2013 and the Tenant filed their application on March 5, 2013.

Based on the above I find the Tenant has filed their application within the stipulated time frames. Accordingly, their request for more time is moot and is hereby dismissed.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 5, 2013 by the Tenant to cancel a 1 Month Notice to end tenancy issued for cause and for other reason.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the parties agreed to settle these matters?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; six 10 Day Notices issued between December 1, 2011 and March 4, 2013; a notice of rent contribution change; a breach letter issued to the Tenant January 4, 2013; a letter issued to the Tenant February 5, 2013; and a 1 Month Notice issued March 4, 2013.

The Tenant did not submit documentary evidence to support their application.

The parties confirmed they entered into a month to month tenancy agreement that began on July 15, 2010. The market value rent is $980.00 and the Tenant's subsidized rent contribution is $638.00 as of June 1, 2012. Rent is payable on the first of each month and on June 24, 2010 the Tenant paid $490.00 as the security deposit based on market value rent.

During the course of this proceeding the parties agreed to settle these matters.

Analysis

The parties mutually agreed to continue to the tenancy and settle these matters on the following terms:

1) The Tenant agrees to withdraw her application;
2) The Landlord agrees to withdraw the 1 Month Notice for repeated late payment of rent;
3) The Tenant will provide the Landlord with post dated cheques dated for the first of each month for full payment of her subsidised rent;
4) The Tenant agrees that her rent will be paid by the first of each month in accordance with the tenancy agreement.

In support of this settlement agreement the Landlord will be issued a conditional Order of Possession that would become effective upon two days of service in the event the Tenant does not comply with the above agreement.

Conclusion

The Landlord has been issued a conditional Order of Possession that will become effective upon two days of service upon the Tenant if the Tenant fails to comply with the above noted settlement agreement.

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 09, 2013

L. Bell, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Special Instructions

FILE #801204

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Send all ☐ Applicants ☐ Respondents copies of the ☐ decision ☐ MN ☐ OP to the following who will distribute the documents:

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 801204

In the matter of the *Manufactured Home Park Tenancy Act,* SBC 2002, c. 77, as amended

Between

S22 **Tenant(s),**

Applicant(s)

And

ALPINE VALLEY ESTATES INC, Landlord(s),

Respondent(s)

Regarding a manufactured home site at: S22 Smithers, BC

Date of Hearing: April 03, 2013, by conference call.

Date of Decision: April 04, 2013

Attending:

For the Landlord: S22 Resident Manager (Landlord)
S22 Resident Manager (Landlord)

For the Tenant: S22 Tenant
S22 Legal Counsel

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC O

Preliminary Issues

At the outset of this proceeding the parties agreed that the named respondent is a resident manager and the Landlord is a corporation. Both parties were in agreement to amend the application to show the respondent as the corporate Landlord and remove the resident manager's name. Accordingly, the application was amended. The resident managers provided evidence and testimony as agents for the Landlord; therefore, throughout this decision they are referred to as the Landlords.

Upon review of the Landlord's written submissions the Landlords advised that they did not serve the Tenant with copies of their last two submissions of evidence. They did however serve him with their original 19 page submission. The Tenant confirmed receipt of the initial evidence package.

Not serving evidence to the applicant is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure.* Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenant has not received copies of the Landlords' last two submissions I find that evidence cannot be considered in my decision. I did however consider the Landlords' testimony and original submission of evidence.

Section 40 (4) of the Act stipulates that a tenant has ten days to make application to dispute a Notice issued for cause. The evidence supports that the Tenant received the 1 Month Notice on February 28, 2013 and he filed his application to dispute the Notice on March 5, 2013. Accordingly, the Tenant does not need to seek more time to make his application and that request is dismissed.

Introduction

This hearing dealt with an Application for Dispute Resolution filed March 5, 2013, by the Tenant to cancel the Notice to end tenancy issued for cause and for other reasons relating to the issuance of the Notice.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the 1 Month Notice to end tenancy issued for cause February 20, 2013 be upheld or cancelled?

Background and Evidence

The Tenant submitted documentary evidence which included a copy of a letter from his physician.

The Landlords submitted documentary evidence which included, among other things, copies of: their written statement; the tenancy agreement; photos of the manufactured home park; an e-mail from the previous manager; and witness statements.

The parties confirmed the tenancy began on April 30, 2007, and rent is payable on the first of each month in the amount of $285.00. The Landlord attempted to personally serve the Tenant with the 1 Month Notice to end tenancy on February 28, 2013; however, the Tenant refused to accept the Notice so the Landlord placed it on a bench, beside gloves, close to where the Tenant was standing.

The Landlords submitted that they have been park manages since June 2012 and from the onset they inherited this issue relating S22 . As supported by the e-mail from the previous park manager, the Tenant has continued S22

S22 near his manufactured home
S22 considered common area. They have
made repeated oral requests to the Tenant to stop

S22

S22

and is posing a danger to
all residents.

The Landlords argued that the Tenant is S22
S22 as supported by their witness statements. S22

S22

S22 They were going to hold off but the Tenant filed to have the Notice
cancelled so they felt they needed to proceed.

S22

The Tenant confirmed

S22

S22

The Tenant submitted that he has never been issued a written warning to stop S22
S22 nor does he recall being told that he would be evicted if he continued to

S22

The Landlords confirmed they have never issued the Tenant a written warning nor do they have records of written warnings from the previous manager. The Landlords had no explanation on why this situation has continued for so long before anyone took action.

S22 S22

At the conclusion of this proceeding as discussion took place where I informed the Tenant that from this day forward he was not i S22 S22 . The Tenant's legal counsel reiterated this to the Tenant.

The Tenant stated that he understood that if the Landlords verify that he has taken any action to alter the condition of common property in the future, the record of this hearing would form part of the Landlords' case to end his tenancy should it come before an Arbitrator for consideration. He also confirmed that he understood that if he had concerns

S22 S22

Analysis

When a landlord issues a 1 Month Notice to end tenancy for cause the burden lies with the landlord to prove the reasons for ending the tenancy.

The 1 Month Notice to End Tenancy issued February 20, 2013 and served February 28, 2013, cited the following reasons for issuance:

The tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Put the landlord's property at significant risk

Tenant has caused extraordinary damage to the unit/site or property/park

Section 40(1) of the Act stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to correct a situation within a reasonable time after the landlord gives written notice to do so.

Based on the foregoing, I find there to be insufficient evidence to uphold the Notice. Accordingly, the 1 Month Notice to end tenancy issued February 20, 2013 is cancelled.

Conclusion

The 1 Month Notice issued February 20, 2013, is HEREBY CANCELLED and is of no force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

From April 3, 2013 forward, the Tenant is not to S22 take any action that would alter the condition of the common property S22

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: April 04, 2013

L. Bell, Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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