



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

AAT

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for an Order requiring the Landlord to provide the Tenant and his guests with unrestricted access to the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided is whether there is a need for an Order requiring the Landlord to provide the Tenant and his guests with unrestricted access to the rental unit.

Background and Evidence

The female Agent for the Landlord and the Tenant agree that the Tenant has lived in this rental unit for approximately eight months, although he moved into a different rental unit within this residential complex sometime in May of 2007. The parties agree that they have no written tenancy agreement, although the Tenant pays monthly rent of \$348.00.

The female Agent for the Landlord and the Tenant agree that the Landlord has imposed the following rules in regards to guests:

- Visitors are not permitted in rental unit without permission from the front desk attendant
- Visitors are only permitted between 0800 and 2300 hours
- Overnight guests must be registered
- Only one overnight guest per room is permitted
- Overnight guests are only permitted to stay for one consecutive week unless prior arrangements have been made with management
- The guest must leave the building when the tenant leaves the building.

The female Agent for the Landlord and the Tenant agree that rules of conduct, which included rules regarding visitors, were posted in the common area of the rental unit when the Tenant first moved into the rental unit in 2007. The Tenant stated that nobody discussed these rules with him at the beginning of the tenancy. The female Agent for the Landlord was unable to state whether these rules were discussed with the Tenant at the beginning of the tenancy as the building was being managed by a different agency at that time.

The female Agent for the Landlord stated that this Landlord assumed full responsibility for managing this building in March of 2008. She stated that the new Landlord attempted to have tenants sign a formal addendum that outlines some of the conditions of the tenancy after they assumed responsibility for managing the building, although she agrees that the Tenant did not sign this addendum.

The Tenant argued that he did not agree to the rules regarding visitors at the beginning of his tenancy, he did not agree to the rules regarding visitors during his tenancy, and that the rules unreasonably restrict access to his rental unit.

The female Agent for the Landlord did not argue that these rules form part of the tenancy agreement. She did argue that the rules regarding visitors do not unreasonably restrict access to the rental unit. She stated that this residential complex is located in the downtown east side and that permitting unrestricted access to visitors would likely result in an unreasonable amount of traffic that would significantly disturb other occupants. She further argued that guests must sign in at the front desk for safety reasons as this will assist management in clearing the building during a fire or similar emergency.

The Advocate for the Tenant argued that even if the rules regarding guests formed part of the tenancy agreement, they are not enforceable because they are in contravention of section 30(1)(b) of the *Act*. He contends that it is not necessary to record the names of visitors for the purposes of fire safety, as it is not normally done in other residential complexes and that safety can be ensured by developing less intrusive methods of ensuring the building is evacuated in an emergency. He further argued that requiring tenants to register their guests is a significant invasion of the Tenant's right to privacy.

Analysis

Section 30(1)(b) of the *Act* stipulates that landlords must not unreasonably restrict access to residential property by a person permitted on the residential property by a tenant of a rental unit in the residential property. Section 9(1) of the Residential

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Tenancy Regulation Schedule stipulates that a landlord must not stop a tenant from having guests under reasonable circumstances in the rental unit. Section 9(2) of the Residential Tenancy Regulation Schedule stipulates, in part, that a landlord must not impose restrictions on guests.

I find that the rule requiring visitors to be approved by the front desk attendant does not comply with section 30(1)(b) of the *Act*, as it unreasonably restricts a guest's access to the residential property. I do not accept that the Landlord needs to know the identity or the number of people in the rental unit for the purposes of evacuating the residential complex in the case of a fire or similar emergency, as this information is not typically available to emergency personnel when they respond to fires or other emergencies. I find that the rule unduly interferes with a tenant's right to privacy and I therefore find that the Tenant is not required to comply with this rule.

I find that the rule restricting visitor hours from 0800 and 2300 hours does not comply with section 30(1)(b) of the *Act* or section 9(2) of the Residential Tenancy Regulation Schedule. Although I recognize that the intent of the rule is to limit noise and other disturbances during these hours, I find that it unduly restricts the activities of those tenants who have guests that do not cause a disturbance. I therefore find that the Tenant is not required to comply with this rule. In reaching this conclusion I am guided, in part, by section 47(1)(d)(i) of the *Act*, which authorizes landlords to end a tenancy if a tenant or a person permitted on the property by a tenant significantly interferes or unreasonably disturbs another occupant or the landlord. As the *Act* provides landlords with a remedy to deal with tenants who have guests that cause a disturbance, I find that the rule limiting visiting hours is unduly restrictive.

I find that the rule requiring tenants to register overnight guests does not comply with section 30(1)(b) of the *Act* or section 9(2) of the Residential Tenancy Regulation Schedule. I do not accept that the Landlord needs to know the identity or the number of people in the rental unit for the purposes of evacuating the residential complex in the case of a fire or similar emergency, as this information is not typically available to emergency personnel when they respond to fires or other emergencies. I find that the rule imposes an unnecessary restriction on guests that unduly interferes with a tenant's right to privacy and the right to the quiet enjoyment of the rental unit and I therefore find that the Tenant is not required to comply with this rule.

I find that the rule restricting the number of days an overnight guest can stay does not comply with section 30(1)(b) of the *Act* or section 9(2) of the Residential Tenancy Regulation Schedule. The Landlord provided no justification for this rule and I therefore find that it imposes an unnecessary restriction on guests that unduly interferes with a tenant's right to the quiet enjoyment of the rental unit and I therefore find that the Tenant is not required to comply with this rule.

I find that the rule that requires guests to leave the building when their host leaves the building does not comply with section 30(1)(b) of the *Act* or section 9(2) of the Residential Tenancy Regulation Schedule. The Landlord provided no justification for this rule and I therefore find that it imposes an unnecessary restriction on guests that unduly interferes with a tenant's right to the quiet enjoyment of the rental unit and I therefore find that the Tenant is not required to comply with this rule.

I find that the rule that limits the number of overnight guests may be justifiable in certain circumstances and I decline to implicitly state that the Tenant does not have to comply with this rule. In reaching this conclusion I am guided, in part, by section 47(1)(c) of the *Act*, which authorizes landlords to end a tenancy if there are an unreasonable number of occupants in the rental unit. In the event that the Tenant elects to have more than one overnight guest, he faces the risk of being served with a Notice to End Tenancy pursuant to section 47(1)(c). In the event that the Tenant disputed that Notice, the Landlord would be required to provide evidence to show that having more than one guest is unreasonable in these particular circumstances. I find that I am unable to decide this matter in advance, as it is dependant on many changing variables.

Conclusion

I hereby Order the Landlord to comply with the *Act* and, specifically, to comply with section 30 of the *Act* and Section 9(2) of the Residential Tenancy Regulation Schedule.

The Tenant is not compelled to adhere to rules that contravene these sections. Specifically, the Tenant is not compelled to register his guests with the front desk attendant, to register his overnight guests, or to ask his guests to leave the building when he leaves the building. The Tenant is reminded that he is responsible for the behaviour of his guests and that the behaviour of his guests could, in some circumstances, result in the end of his tenancy.

The Tenant retains the right to have visitors at any time, although he is again reminded that he is responsible for the behaviour of his guests and that the behaviour of his guests could, in some circumstances, result in the end of his tenancy.

The Tenant retains the right to determine the number of overnight guests he has and the duration of their stay, although he is reminded that the Landlord has the right to end this tenancy if it is able to establish that the Tenant has an unreasonable number of occupants in the rental unit.



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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 02, 2009.

Dispute Resolution Officer