



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, MDNC

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlord to allow access to the rental unit for the tenant or the tenant's guests and awarding the tenant financial compensation or expenses incurred in the preparation of the evidence for this application. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction over this dispute?
- If so, are the access rules of this facility contrary to the *Residential Tenancy Act*?
- If so, is the tenant entitled to a monetary order?
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Background and Evidence

This month-to-month tenancy commenced November 1, 2012. The monthly rent of \$375.00 is due on the first day of the month or upon receipt from the Ministry of Human Resources. The tenant paid a security deposit of \$187.50. Water, electricity and heat are included in the rent.

The short written tenancy agreement contains the following relevant clauses:

"6. Visitors

Visitors are permitted in the hotel from 9 am – 10 pm daily. Under reasonable circumstances the landlord can restrict access to visitors. Overnight Guests are not permitted in order to maintain the peace and quiet of the building and respect other tenants. Tenants are also required to register their guests, who must have photo identification at the front desk.

7. Room Check

For the health and safety of all tenants and in compliance with City of Vancouver Standards of Maintenance bylaw the landlord will perform a room check every 24 hours. This will happen only if the tenant has not been seen in the previous 24 hours and will occur usually at 9:00 pm nightly.”

The rental unit is located in a hotel owned by the local municipality and operated by the landlord. The landlord described the facility and their services as follows:

“The [hotel] is a housing based health care facility with a mandate to provide dignified housing tot he most marginalized citizens in Vancouver’s Downtown Eastside. We have 85 rooms and house 92 residents. We provide suites only to people who have persistent mental illness, chronic and severe health care needs, and substance abuse issues. Their selection is based on their degree of need.

The majority of our operating funding is supplied by Vancouver Coastal Health Authority and B.C. Housing.

The [hotel] has 2 Mental Health Worker Project Level 3 staff on site 24 hours per day. The role of the staff is to ensure the safety of all in the building, to de-escalate crises, to administer medications to the residents, to maintain the cleanliness of the building, to assist residents with home support, to provide harm reduction supplies, to provide clinical and other referrals to residents, to provides security at the front door, to serve the daily meal, to call emergency services when required and to assist residents with the daily needs to the best of their abilities.

There are also 2 qualified Home Support staff on site 35 hours per week. The role of the Home Support workers is to primarily focus on the residents’ homes and provide cleaning, laundry, assistance with pest control preparation, and organization of their suites.

In addition, there are Home Care workers and Care Aides provided by the Vancouver Coastal Health Authority on site 7 days a week from 8 am – 11 pm. These workers provided cleaning and laundry services, physical transfers for residents with mobility issues, personal grooming and other personal care.

On the first floor of the facility there is an embedded clinic whose focus is to provide primary and psychiatric care to the residents of the [hotel]. The clinic does treat some others in the community who live at other [landlord] projects.

The clinic is staffed with a Medical Doctor, a Registered Nurse, a Clinic Manager, and a Medical Office Assistant, 5 days per week. Specialist doctors also hold clinics there to treat specific medical concerns. The Medical Director of the clinic is [name].

The residents have fully contained suites with a bathroom in suite. There is a communal kitchen on each floor and free laundry facilities on each floor. Residents are provided with a hot meal every day, laundry soap, toilet paper, home support services, medication administration services, harm reduction supplies, cleaning supplies, personal hygiene supplies, and more.”

It is common ground that the tenant suffers from mental illness and has been a client of the landlord since 2006. His advocate is also a long term tenant of the landlord.

This issue arose as a result of an incident in April when the tenant brought a female guest to the building. The guest could not produce her photo ID. At some point the guest went up the tenant’s room contrary to the directives of the landlord’s staff. The parties gave somewhat differing accounts of what happened before the guest went upstairs, while she was in the tenant’s room, and after she left.

It is common ground that the landlord’s staff did express concern about the tenant’s mental health and behaviour, first to his medical team and then, some time later, to a doctor associated with the health clinic in the building. The tenant was hospitalized for seven days. This was not his first hospitalization.

The tenant’s visitor privileges were suspended after the incident and had not been reinstated as of the date of the hearing.

The tenant had one witness – another long term tenant of the same landlord in a different building – testify about a number of occasions dating back to 2010 when he said the landlord’s staff had entered his room without permission or adequate notice.

The tenant had two other persons available as witnesses. I was told that the point of their testimony was to establish that the statements made by the landlord’s staff to medical personnel prior to him being hospitalized were false. As I have no jurisdiction over decisions made by mental health staff or facilities I declined, pursuant to rule 11.2 of the *Residential Tenancy Branch Rules of Procedure*, to hear them.

The landlord argued that although they tried to follow the *Residential Tenancy Act* they were exempt from it by virtue of section 4(g)(v).

The tenant argued that the *Residential Tenancy Act* does apply to this tenancy because:

- The document signed by the parties is called a residential tenancy agreement.
- The facility is not registered as a community care or health facility.
- The landlord is registered as a non-profit housing society.
- The tenant pays rent.
- In 2009 the City who owns the property listed it as non-market housing rather than a community care facility, group residence or shelter.

The tenant also files a copy of a previous Residential Tenancy Branch decision dated December 6, 2011 that held this landlord was subject to the jurisdiction of the *Residential Tenancy Act* and that landlord could not impose rules about visitor access as that was contrary to the legislation.

Analysis

Section 4 of the *Residential Tenancy Act* exempts a number of living/rental arrangements from the jurisdiction of the Residential Tenancy Branch. The relevant portion of the section provides as follows:

- 4 This Act does not apply to
- (g) living accommodation
- i. in a community care facility under the *Community Care and Assisted Living Act*, **or**
 - ii. in a continuing care facility under the *Continuing Care Act*, **or**
 - iii. in a public or private hospital under the *Hospital Act*, **or**
 - iv. if designated under the Mental Health Act, in a Provincial mental health facility, an observation unit or a psychiatric unit, **or**
 - v. in a housing based health facility that provides hospitality support services and personal health care, **or**
 - vi. that is made available in the course of providing rehabilitative or therapeutic treatment or service.

Although previous decisions may be helpful arbitrators are not bound by them pursuant to section 64(2) of the *Residential Tenancy Act*, which states that an arbitrator must make each decision on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions.

The weight any previous decision may have will depend on how closely the facts of the previous case align with the case that is being heard and decided.

In the case cited by the tenant, the parties had signed a multi-page tenancy agreement which included the following provisions:

“The landlord may not stop the tenant from having guests in the residential premises under reasonable circumstances.”

“Any change or addition to this tenancy agreement must be agreed to in writing and initialled by both the landlord and the tenant and must be reasonable. If a change is not agreed to in writing, is not initialled by the landlord and tenant or is not reasonable, it is not enforceable.”

Sometime after that tenancy commenced the landlord implemented visitor rules similar to the rules contained in this tenancy agreement, without the consent or knowledge of the tenant.

The arbitrator in that decision held that “In the circumstances, I find that the parties entered into a tenancy agreement that is in compliance with the *Residential Tenancy Act*.”

Although the landlord is the same, the facts in the case cited by the tenant and the facts in the case before me, in particular the wording of the two rental agreements, are quite dissimilar. Accordingly, I am not bound to reach the same decision as the arbitrator in the case cited.

How parties label a transaction is not determinative of the true legal nature of the contract. For example, some manufactured home park owners try to avoid the jurisdiction of the Residential Tenancy Branch by calling contracts that are really tenancy agreement camping permits.

This facility offers the tenant many more services than what is included in the rent. The nature of these services may be described as hospitality support, personal health care, and/or rehabilitative or therapeutic treatment or services. I find that this facility is a housing based health facility within the meaning of section 4(g)(v) and that accordingly the Residential Tenancy Branch does not have jurisdiction over this dispute.

Conclusion

The Residential Tenancy Branch does not have jurisdiction over this dispute. The tenant's application is dismissed.

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: June 23, 2014

Residential Tenancy Branch

