



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE BOURBON HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, AAT

Introduction

This hearing was scheduled to deal with a tenant's application for Orders for compliance with the Act, regulations or tenancy agreement and to allow access to the rental unit for the tenant's guests. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is it necessary to issue orders to the landlord?

Background and Evidence

The tenant resides in a single room occupancy in a hotel located in the downtown eastside area of Vancouver. The tenants and their guests have shared access to bathrooms located on each floor. Persons wishing to visit occupants of the hotel must be "buzzed in" at the main entry door and then the elevator stops at the front desk. Guests are to present the landlord's staff with identification and their information is logged in a guest ledger.

The tenant asserts that many guests do not have identification or if they do it is determined to be insufficient by the landlord and, in such cases, access beyond the front desk is denied. The tenant described a form of identification that is provided free of charge by an organization and claims the landlord has identified this form of identification as being insufficient for purposes of accessing the residential property. Further, the landlord seizes identification from guests and does not return the identification on occasion. Finally, I heard from the tenant that the advocate appearing at this hearing has also been denied access to the residential property even though he has identification.

The tenant raised the by-law requirement that the landlord maintain a guest ledger; however, the tenant suggested that this requirement is related to fire safety so that if there is a fire at the property the fire department would have know how many people are in the building. As such, the tenant submitted that the requirement to maintain a guest ledger does not mean the landlord is required to obtain the name or other identifying information about a guest.

The tenant produced two previous decisions issued by the Residential Tenancy Branch. One of which was issued on July 22, 2011 and involved the landlord and the tenant's advocate. The second decision involved a different landlord and the tenant's advocate. Both decisions dealt with similar issues raised as part of this Application for Dispute Resolution. The tenant seeks to have the orders made in decision issued in July 2011 enforced.

In the July 22, 2011 decision the Arbitrator ordered the landlord to permit access to all of the guests. The Arbitrator also found that the landlord did not have the right to retain the identification of guests.

The tenant provided a photograph of a sign posted in the window of the main entry door at the property. The sign indicates it is written by the landlord and reads:

Visitors to this building are required to have valid picture identification and check in at the front desk on the first floor
If you do not have I.D. you will not be allowed in.

[reproduced as written]

The landlord claimed the photograph was not included in the evidence package served upon the landlord but did not deny that this sign is posted at the main entry door.

The landlord acknowledged that identification is requested of guests but denied the tenant's statements that the free form of identification is not accepted by the landlord. The landlord produced a copy of the "visitor log" maintained by the landlord that demonstrates the free identification is acceptable as it is often recorded in the ledger. The landlord denied that identification is seized from guests and testified that the information is recorded and then returned to the guest. The landlord also testified that on occasion guests are permitted access to the property without identification but are cautioned that they should have identification the next time they visit.

The landlord acknowledged that the request to see identification of guests is not a requirement by law, but that it is a internal policy of the landlord. The landlord described vandalism and destruction of property and loitering at the property, especially in the shared bathrooms and common areas, by intoxicated, drug-addicted and/or homeless persons that may gain access to the property. The request for identification and denying entry to those who are abusive is done in an effort to reduce these incidents.

With respect to the advocate appearing at the hearing in particular, the landlord provided evidence to demonstrate that the advocate had been removed from the property by police in September 2011 and signed a document agreeing to not attempt to re-enter the property. The landlord considers the advocate's attempts to re-enter the property to constitute trespassing and this Application for Dispute Resolution to be a further attempt by the advocate to harass the landlord.

The tenant explained that he and his advocate are activists and advocate for the rights of those living in the downtown eastside area.

Analysis

It is important to note that each decision issued by an Arbitrator under the Act is unique and is not precedent setting. This is provided for under section 64(2) of the Act, which states:

(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

As such, I may consider other decisions but I am not bound by the decisions issued by other Arbitrators concerning other tenancies, even if the same landlord may have been named in another decision. Accordingly, I find it is not before me to "enforce" the decision issued on July 22, 2014 since the orders included in that decision involve a former tenant. Rather, I find that it is before me to determine whether the tenant who appeared before me is entitled to the orders he is seeking.

With respect to the dispute before me, the tenant is largely relying upon section 30(1) of the Act which provides:

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

[my emphasis added]

In interpreting legislation, each word has meaning and must be considered. Included in section 30(1) is the word “unreasonably”. I interpret the inclusion of this word to mean that a landlord may restrict access if it is reasonable to do so in the circumstances.

With respect to the advocate being denied access to the property, I find such denial is reasonable, in the circumstances, since the advocate agreed, in writing, to not re-enter the property following a police incident in September 2011. Therefore, I find the landlord has not violated the Act with respect to denying entry to the advocate.

With respect to other guests seeking access to the property, I find the landlord has satisfied me that the landlord accepts the free form of identification as this is evidenced by the “visitor log” maintained and produced as evidence by the landlord. Therefore, I reject the tenant’s submissions that the free form of identification is not accepted by the landlord.

Nevertheless, I am concerned about the requirement for a guest to produce identification in any form so as to gain access to the residential property. It was acknowledged by the landlord that the request for identification is based upon an internal policy and not based upon a legal requirement. While I appreciate the issues the landlord contends with at the property, I find the requirement to produce photographic identification unreasonably restricts access to guests who wish to visit a tenant residing at the property and do not have identification with them. Therefore, I **ORDER the landlord to cease requiring guests to produce identification before they may be permitted access to the residential property.**

The tenant asserted that the landlord seizes the identification of guests seeking access to the property; however, this allegation was denied by the landlord. While I make no finding that the landlord has seized or retained identification, to ensure compliance with

the Act, I grant the tenant's request for an order to that effect. Therefore, **I ORDER the landlord to not seize or retain identification that may come into the landlord's possession for any reason.**

It is important to note that the orders issued in this decision deal specifically with the landlord's practice of requiring identification from guests. Despite these orders, the landlord retains the right to restrict access to a tenant or a guest where it is reasonable to do so in the circumstances, as provided under section 30(1) of the Act. To illustrate, where a landlord has sufficient reason to believe that a person is likely to cause harm to person or property at the residential property, it may be reasonable for the landlord to restrict access to that person. As a caution to the landlord, where the landlord's decision to restrict access is called into question, it is reasonable to expect that the landlord may be required to demonstrate the reason(s) for denying access.

Conclusion

The landlord has been ordered to cease requiring the tenant's guests to produce identification before they may be permitted access to the residential property. I have also ordered that the landlord must not seize or retain identification that may come into the landlord's possession for any reason.

The landlord retains the right, as provided under section 30(1), to restrict a person's access to the property where it is reasonable to do so in the circumstances. I have found that the landlord's denial of entry by the tenant's advocate is reasonable in the circumstances presented to me and this particular restriction of access is not a violation of the Act.

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: July 18, 2014

Residential Tenancy Branch

