



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, LAT, RR, PSF

Introduction

This hearing dealt with the tenant's application for the landlord to provide access to the rental unit for the tenant's guests; authorization to change the lock; and, allow the tenant to reduce rent for services or facilities agreed upon but not provided.

The tenant requested his application be amended to request a storage locker be provided to him rather than a rent reduction. The landlord indicated during the hearing that a storage space has been left vacant pending the outcome of this decision. I found the tenant's request for amendment to be non-prejudicial as it was apparent that the landlord had anticipated this request. The tenant also withdrew his request for a rent reduction or provision of a workshop space. I amended the tenant's application accordingly.

Issue(s) to be Decided

1. Is it necessary to issue orders to the landlord with respect to allowing the tenant's guests access to the property?
2. Is the tenant authorized to change the locks to his rental unit?
3. Is it necessary to issue an order to the landlord to provide the tenant with a place for storage?

Background and Evidence

The tenancy commenced approximately 15 years ago under an oral agreement with the former owner of the property. Approximately 7 years ago the property was acquired by BC Housing and management of the property is provided by the named landlord. At no time has the tenant signed a tenancy agreement with the current or former owner of the property, or agent for the owner, despite the current landlord's request for the tenant to do so.

The rental unit is a single room occupancy unit and the tenant's rent is \$375.00 payable on the 1st day of every month. The tenant's rent is sent directly to the landlord by Income Assistance.

Below, I have summarized the tenant's requests for remedy and the landlord's responses.

1. Access to the rental unit by the tenant's guests

It was undisputed that since a stabbing and double shooting took place at the residential property in January 2014, effective April 1, 2014 the landlord requires any guest is to provide the landlord's staff their government identification before access to the property is granted.

The tenant acknowledged that the landlord has the right to restrict access where it is reasonable to do so; however, the tenant submitted that the landlord's current practice unreasonably restricts people from visiting him if they do not have government identification even where his guests pose no threat or harm to the landlord, the property or other tenants. The tenant referred to other decisions written by other Arbitrators with respect to other properties operated by different landlords in support of his position that the landlord's practice violates the Act. The tenant claimed that he gave copies of these decisions to the landlord but the landlord has not changed its practice. The tenant did not provide copies of the decisions to which he referred for my review although I am aware of the existence of a few of them.

The landlord submitted that prior to the January 2014 incident, guests were permitted to submit other identification to the landlord in order to gain access to the property, such as those referred to as "Life skills" identification or a photocopy of documentation bearing their identification or indicating the guest has applied for government identification. However, the "unofficial" identification played a part in not being able to identify the criminals responsible for the January 2014 incident which led to the landlord changing its practice to require official government identification before granting access to visitors. The landlord pointed out that services are available to persons in need of government identification and that on occasion a guest is permitted access on a temporary basis where they have applied for but not yet received the government identification.

In summary, the landlord views the practice of requiring government identification from tenants' guests as a way to protect its tenants. The tenant's view was that the landlord was merely trying to limit its own liability and that its current practice does not protect tenants as on the day of the January 2014 incident the criminals rushed past the front desk without providing identification.

2. Rental unit lock

The tenant submitted that approximately three months ago one of the landlord's managers told tenants in a common room that he had lost one of the master keys. The tenant approached the landlord about this issue on a number of occasions and the landlord's response was different each time. Not satisfied that the landlord was taking adequate action to protect the tenants, the tenant installed his own lock on the door to his rental unit. On April 17, 2015 the landlord's maintenance personnel attempted to remove the tenant's lock but the tenant interfered with their efforts. The tenant then replaced his damaged lock with another lock he acquired. The tenant seeks authorization to leave his lock installed on the door of his rental unit and was agreeable to providing the landlord with a copy of the key for the lock.

The landlord explained that the property has an electronic entry system and that upon notification from its former manager that an electronic key had gone missing the landlord audited their system repeatedly to see if the missing key had been used. The landlord testified that there has been no use of the missing key. However, in an effort to mitigate any risk that the key may be used in the future, the landlord ordered new lock tumblers for all of the rental units which arrived last week and are set to be installed by the maintenance crew this week.

The landlord pointed out that the entry door to the rental units are fire-rated steel doors that are expensive and installation of an unauthorized lock by the tenant may have damaged the door for which the tenant would be responsible. The tenant denied damaging the door by installing his own lock. I did not permit further testimony on this point as damage to the door was not an issue for me to determine and evidence

pertaining to such had not been provided to me. The parties remain at liberty to resolve this dispute on their own and failing that the parties may file a future application as appropriate.

The landlord also pointed out that the landlord requires the tenant to return the electronic portion of the lock system that he removed from the door so as to perform its re-keying efforts this week. The tenant acknowledged that he has the part to which the landlord referred in his possession but questioned the landlord's need to have it before the new tumblers are installed. During the hearing, **I ordered the tenant to return any parts to the landlord's locking system to the landlord without any further delay.**

3. Storage locker

The tenant testified that when his tenancy formed the owner of the property at that time provided the tenant with access to a storage locker. The tenant testified that he had use of a storage locker since then until January 2015 when the current manager required he empty the locker or have its contents disposed of except for a 1.5 year period when the building was undergoing renovations between 2007 and 2009. The tenant seeks to have a storage space returned to him.

The landlord submitted that the tenant's rent does not include a storage locker; however, the landlord acknowledged that the landlord has no copy of a signed tenancy agreement with the tenant demonstrate that position. The landlord testified that tenancy related documents cannot be obtained from the former owner or agent for the former owner. However, the landlord took the position that the tenant has not produced a written tenancy agreement or any other documentation to demonstrate that he is entitled to a storage locker. The landlord did acknowledge that one of its former managers may have permitted the tenant to use a storage locker during the years 2012 of 2014 but that former manager was fired for gross negligence.

The landlord explained that it requires the building's storage space to accommodate janitorial supplies, building furnishings such as refrigerators, and storage of tenants' abandoned possessions. The landlord acknowledged that there is some vacant storage space set aside pending the outcome of this decision but expressed concerns that the tenant may use the space to store dangerous goods, that to provide the tenant with the space would limit use of the space for other tenants or other purposes, and that other tenants may be disgruntled because they have been denied storage space.

The tenant's obligation under the Act to maintain the space over which he has exclusive possession, such as a storage locker, was discussed during the hearing. As were the tenant's obligations not to put the property or other tenants at risk by his actions or things that he stores.

Analysis

Upon consideration of everything provided to me, I provide the following findings and reasons with respect to each of the issues raised by the tenant by way of this application.

1. Access to the rental unit by the tenant's guests

Although the tenant referred to dispute resolution decisions issued by other Arbitrators to other landlords with respect to this issue the tenant did not provide the decisions for my review. Nevertheless, as I informed the parties during the hearing, I am familiar with a few of those decisions. It is important to note; however, that each decision issued by an Arbitrator under the Act is unique and is not precedent setting. As such, I may consider other decisions but I am not bound by previous decisions concerning other

tenancies, even if the same landlord may have been named in another decision. 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.

[reproduced as written]

Given the above, I find that it is before me to determine whether the tenant who appeared before me has established that he is entitled to the remedy he is seeking.

The tenant is largely relying upon section 30(1)(b) 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.

[Reproduced as written with the exception of my emphasis as underlined]

In my view, it is clear that the purpose of section 30(1)(b) is to protect a tenant's right to have guests at their rental unit; however, I find that this provision does contemplate that there may be circumstances where it is appropriate to restrict access as demonstrated by the inclusion of the word "unreasonably". In interpreting legislation, each word has meaning and must be considered. Therefore, I interpret this section of the Act to mean that a tenant's right to have guests access his rental unit is not to be interfered with unless the landlord has a reasonable basis to restrict access.

I accept the tenant's submission that there are guests who pose no harm to the landlord, the landlord's property or other tenants or the landlord's property and yet have been denied access to the property simply because they do not have or will not give the landlord government identification as this position was not disputed by the landlord. Therefore, I must determine whether it is unreasonable for the landlord to restrict access to a tenant's guest in such cases.

The Act does not define "reasonable" or "unreasonable" and I rely upon the word's ordinary meaning. Definition of "unreasonable" includes: clearly inappropriate, excessive, or harmful; and, lacking justification in fact or circumstance.

I find the landlord did not provide adequate justification to prevent a tenant from having a guest in their unit where the guest poses no harm to the property or others at the property. In my view, the landlord's practice is all too encompassing and denies the tenant the right to have guests as afforded the tenant under the Act. Therefore, I find the tenant has established to my satisfaction that the landlord's practice to require government identification from a tenant's guest prior to permitting access to the rental unit violates section 30(1)(b) of the Act.

Having found the landlord's practice to require government identification from the tenant's guests to be in violation of the Act, **I ORDER the landlord to cease requiring the tenant's guests to provide the landlord with their government identification before they may be permitted access to the rental unit.**

It is important to note that the above order deals specifically with the landlord's practice of requiring identification from guests and the landlord retains the right to restrict access to a guest where it is reasonable to do so in the circumstances. To illustrate, where a landlord has sufficient reason to believe that a person is likely to cause harm to persons 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 at some point in time the reason(s) for denying access and landlord may wish to retain records of such.

2. Rental unit lock

It is largely undisputed that an electronic master key may have gone missing a few months ago. The landlord submitted that they monitored the electronic key system repeatedly in determining that it has not been used and I accept the landlord's position as I find it likely and reasonable that they did so and in the absence of any evidence that unauthorized entry had been made with the missing key.

Having heard the landlord has ordered and received new tumblers, I am satisfied the landlord has taken appropriate measures to mitigate any future risks.

In light of the above, **I do not authorize the tenant to change the lock on his rental unit door or to leave the lock he installed in place.**

Further, having heard the tenant interred with the landlord's efforts to return the locking system back to their system on April 17, 2015, **I order the tenant to refrain from interfering with the landlord's efforts to return the locking system to the system they have chosen for this property.**

3. Storage locker

Under section 1 of the Act, a tenancy agreement is defined to include tenancy agreements that are entered into orally. In this case, I accept the tenant's testimony that the tenancy agreement he formed with the former owner was oral in the absence of any evidence to the contrary.

When ownership or management of a residential property changes hands, any tenancy agreement in place remains in effect until such time the tenancy ends or such time a new tenancy agreement replaces the original agreement, if ever. It is important to note that the landlord cannot require a tenant to sign a new tenancy agreement after a tenancy has formed. Rather, signing a new tenancy agreement must be accomplished by mutual agreement. In this case, I heard undisputed testimony that the tenant has not signed any new tenancy agreement despite the landlord's request for such which means the tenancy agreement that formed orally with the former owner remains in effect.

Where a tenancy forms orally, the agreed upon terms of the tenancy are generally derived from the parties that participated in the formation of the tenancy or failing that that actions or conduct of the parties. In this case, the former owner or agent who represented the owner at the time this tenancy

formed was not available to testify and records from the former owner or agent were not obtainable. As such, I am left with the tenant's testimony and the conduct of the parties to determine what the parties agreed upon when the tenancy formed 15 years ago.

The tenant has testified that he and the former owner agreed that the tenant could have storage space when his tenancy formed. I find the tenant's position that he had a storage locker throughout his tenancy with the exception of a period where the building was undergoing significant renovation was not contradicted by evidence from the landlord. Therefore, based on the balance of probabilities, I accept the tenant's version of events that a storage locker is a service or facility included in rent when his tenancy formed.

In light of the above, **I ORDER the landlord to provide the tenant with a storage space approximately the same size as the storage locker he had been using up to January 2015 without any further delay.**

As discussed during the hearing, the tenant has an obligation to maintain the property for which he has possession and access in a manner that complies with section 32 of the Act which provides:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

[reproduced as written]

In addition, the tenant has an obligation to ensure his actions or neglect do not seriously jeopardize the health or safety or put the property at significant risk, as a tenancy may be ended for these reasons under section 47 of the Act.

Conclusion

By way of this decision I have issued orders to the landlord to cease its practice to require government identification from the tenant's guests before the guest is permitted access to the rental unit.

The tenant's request to change the lock on his rental unit door has been denied. The tenant has been ordered to return any parts to the landlord's locking system to the landlord without delay. The tenant has been ordered to refrain from interfering with the landlord's efforts to change the locking system.

The landlord has been ordered to provide the tenant with storage space that approximates the size of the storage closet he had been using up until January 2105 without delay.

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 04, 2015

Residential Tenancy Branch

