Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0781178 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, undated, with an effective move-out date of May 31, 2015 ("1 Month Notice"), pursuant to section 47.

The landlord's agent, RK ("landlord") and the tenant and his advocate, WP, attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. During the hearing, the tenant confirmed that his advocate had authority to make submissions on his behalf at this hearing. The landlord confirmed that he is involved in building maintenance security with the landlord company named in this application and that he had authority to represent the landlord company as an agent at this hearing. Witness GZ testified on behalf of the landlord at this hearing.

The landlord testified that the tenant was served with the landlord's 1 Month Notice on April 29, 2015, by way of posting to his rental unit door. The landlord indicated that he had written notes from the landlord owner indicating that the notice was posted on that date. The owner did not testify at this hearing. The tenant confirmed receipt on May 3, 2015. The tenant confirmed that he is not aware as to when the landlord posted the notice because the notice is undated. In accordance with sections 88 and 90 of the *Act*, I accept the tenant's evidence and find that he was duly served with the landlord's 1 Month Notice on May 3, 2015.

The landlord confirmed that the landlord's building manager personally received the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2014 and continues to present. Monthly rent in the amount of $375.00 is payable on the first day of each month. A security deposit of $187.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement governs this tenancy but a copy was not provided by either party for this hearing.

The tenant entered into written evidence a copy of the 1 Month Notice. In that notice, the landlord cited the following reasons for the issuance of the notice:

> *Tenant or a person permitted on the property by the tenant has:*
> - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
> - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
> - *put the landlord's property at significant risk.*

The landlord testified that the tenant has guests visit him at his rental unit outside of allowable visiting hours, without government-issued identification or any approved identification. The landlord indicated that the lack of identification poses a safety risk to the landlord, the landlord's building and other tenants. The landlord stated that if the fire alarm rings in the building, the landlord has no way of identifying the tenant's guests, which is a safety issue. The landlord also indicated that if the police are called to the building, there is no way to identify the tenant's guests. The landlord explained that in the past, when the police have been called, they have escorted the tenant's guests out of the building. The landlord noted that he has personally asked the tenant's guests to leave the building when they do not have identification.

The landlord noted that the tenant repeatedly has guests over between 10:00 p.m. and 9:00 a.m., when no guests are allowed in the rental building. The landlord stated that the tenant signed specific rules restricting guests from visiting during the above hours. The landlord indicated that he has personally seen the tenant's guests in the building between 2:00 a.m. and 4:00 a.m. The landlord noted that he has video surveillance of the tenant's guests, but he did not submit it for this hearing because the landlord was

not organized enough to do so and because of surveillance camera problems. The landlord testified that the tenant's guests disturb other tenants in the building by knocking on their doors asking for cigarettes. The landlord indicated that these other tenants are witnesses to the tenant's guests' disturbances. However, the landlord only approached one tenant during the course of this hearing, to testify at this hearing. The landlord stated that he has heard loud conversations involving the tenant's guests coming from the tenant's rental unit, and that the tenant's next-door neighbour is unable to sleep because of the noise from the tenant's rental unit. This neighbour did not testify at this hearing.

Witness GZ testified that he has heard a lot of "rumors" about the tenant having guests over and there is a lot of "traffic" at the tenant's rental unit. The witness indicated that a woman has knocked on his door asking for lighters and cigarettes and that he saw her coming from the tenant's rental unit and he was told by an employee of the landlord that she was a guest of the tenant. He indicated that the knocking on his door occurs approximately three times per week. The witness stated that these occurrences do not affect his health, safety or work. Witness GZ testified that he is leaving the rental building for reasons unrelated to the tenant or his guests. He explained that there is no safety in the rental building because the landlord terminated security there.

The tenant's advocate indicated that the landlord cannot contract outside of the *Act* by restricting the tenant's guests. The tenant indicated that he could not recall what he signed in his tenancy agreement, particularly limiting guests during certain hours. The tenant stated that only one of his guests has identification and the others do not. The tenant's advocate stated that the landlord has not provided any proof, only hearsay, that the tenant's guests have caused problems. The tenant noted that he only has two to three guests visit his rental unit and that they are quiet when they visit. The tenant stated that his guests do not knock on other tenants' doors in the building.

Analysis

While I have turned my mind to the testimony of both parties and witness GZ, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within 10 days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on May 3, 2015. The tenant filed his Application on May 11, 2015. Accordingly, I find that the tenant filed his Application within the 10 day time limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not provide any documentary evidence, including medical records, police reports, witness statements or any other documents for this hearing.

Significant interference or unreasonable disturbance of another occupant or the landlord

I find that the landlord and witness GZ did not provide sufficient evidence to demonstrate that the tenant "significantly interfered with" or "unreasonably disturbed" the landlord or other occupants, as per section 47(1)(d)(i).

The landlord has not demonstrated that the tenant has exhibited a pattern of behaviour that constitutes significant interference or unreasonable disturbance. The landlord indicated that the tenant's guests have knocked on other tenants' doors, have been noisy and disturbed one neighbour's sleep. The tenant denied these allegations. Witness GZ indicated that although one of the tenant's guests has knocked on his door, this has not affected his health, safety or work, and that he is leaving the building because of other unrelated issues. The landlord did not provide any witness statements or other witness testimony aside from witness GZ's evidence, to show the effect of the tenant's or his guests' behaviour on other occupants in the building.

In any event, I do not find the above incidents to be a significant interference or an unreasonable disturbance to the landlord or other occupants. Accordingly, I find that the landlord did not provide sufficient evidence, on a balance of probabilities, to demonstrate that the tenant significantly interfered with or unreasonably disturbed the landlord or other occupants, as per section 47(1)(d)(i) of the *Act*.

Serious jeopardy to health, safety or lawful right of another occupant or landlord and significant risk to landlord's property

The landlord and witness GZ did not provide any medical or other documentary evidence that their own health or safety or lawful rights were "seriously jeopardized" by the tenant as per section 47(1)(d)(ii). In fact, witness GZ testified that his health and safety were not affected by the tenant's female guest knocking on his door.

I do not find a possible future fire alarm issue to be a risk to the landlord's property. The landlord indicated that the tenant's guests have been seen in the fire escape area. The landlord did not provide photographic, documentary or witness evidence of this fact or

show the risk to the building if this was actually occurring. The landlord did not provide sufficient evidence that the police actually attended at the rental building, as no police report, witness or documentary evidence was produced to this effect.

The landlord did not provide any written evidence indicating that the tenant was warned about his behaviour or asked to correct it within a certain period of time. In order for the tenant to have notice about the landlord's concerns, he must have notice in order to properly respond.

If the landlord's or other occupants' health and safety were at risk, or there was concern about significant interference or unreasonable disturbance towards other occupants or the landlord, appropriate direct action should have been taken as soon as possible by the landlord and the landlord should have provided proof of this fact. The landlord indicated that he has video surveillance of the tenant's guests causing disturbances, but he did not provide this evidence for this hearing.

The landlord has placed restrictions on the tenant's guests by limiting visiting hours and requiring identification to be produced. The tenant states that this is not permitted as per section 30 of the *Act*, which states, in part:

> *30 (1) A landlord must not unreasonably restrict access to residential property by*
>
> *…*
>
> *(b) a person permitted on the residential property by that tenant.*

The case of *Atira Property Management v. Richardson*, 2015 BCSC 751, is instructive in this regard. In that case, the Court dismissed the landlord's application on judicial review. The landlord stated that the Arbitrator failed to consider the "reasonableness" requirement of section 30 of the *Act*.

A review hearing of the original Arbitrator's decision was held, as the landlord was unable to attend the original hearing. Arbitrator V made a decision, confirming the original decision of Arbitrator N, stating the following at paragraph 16 of the *Atira* decision:

> *[16] The Arbitrator ruled as follows:*
>
> *…*
>
> *The tenant has requested an order requiring the landlord to comply with the Act, in this case, section 30(1)(b). The landlord argued that restricting or limiting all tenants' guests to individuals who are able to present a government issued identification card a reasonable requirement considering the location and composition of the neighbourhood, due to what the landlord called a "unique demographic".*

> *I, however, find that this "unique demographic" is entitled to and to receive all rights and privileges afforded tenants under the Act. I therefore find the landlord has submitted no evidence supporting that restricting this tenant's guests to be reasonable. I also accept the evidence of the tenant that it would create a hardship for his guests to produce a government issued identification card each visit to further conclude that the restrictive access is unreasonable.*
>
> *I also do not accept that the City's bylaw required that the tenant's guest produce a government issued identification card, only that they maintain records of guests.*
>
> *I therefore find the landlord's policy of requiring the tenant's guests to produce a government issued identification card upon each visit infringes upon the tenant's right to have guests visit him at his place of residence, and I therefore do not accept that the landlord's restrictions are reasonable…*

The Court referred to Arbitrator V's decision, by noting:

> *[39] In submitting that the Arbitrator failed to consider and apply the statutory requirement of "reasonableness" the petitioner is only arguing that the Arbitrator was wrong because she did not agree with the petitioner's position. The Arbitrator clearly rejected the notion that the statutory protection afforded to tenants under S. 30(1)(a) and (b) could be limited or abrogated by landlords implementing "policy" decisions. If the meaning of reasonable restrictions was intended to include general policies adopted by landlords, regardless of the individual situation or behaviour of the tenant, the statute could have said so. It does not, and I am of the view that the Arbitrator correctly assessed the intention of the statute to be to protect individual tenants and their guests from unreasonable interference by landlords. It would be wrong in principle to permit the protection offered by the statute to be eroded by ad hoc non-statutory "policy" instruments promulgated by landlords, however well-intentioned.*

With respect to limiting the hours of access of the tenant's guests, the *Atira* Court notes at paragraph 28:

> *[28] This has been interpreted as a personal right. In RTB decision 1043, July 2010, the situation of a landlord attempting to put in place a systemic rule limiting access between certain hours was ruled to be unreasonable:*
>
> > *…*
> > *However, the problem of preventing unauthorized entry to residential buildings is a universal issue for every landlord in the province operating multi-unit complexes. Concerns about thefts, assaults, vandalism,*

> *squatters, drug activity or gangs are not unique to this landlord nor this complex. Financial challenges are also a common limitation. However, landlords have been required to find a means by which security can be ensured without violating the Act or unreasonably restricting a tenants right to have visitors.*
> *…*
> *I do not accept the landlord's argument that restricting visitors is critical to avoid disturbing other residents. "Business hours" are not necessarily applicable to every individual's lifestyle. Whether the tenant is a shift-worker or merely likes to keep odd hours, a tenant is entitled to possession of the rental unit for 24 hours of every day and under the Act is entitled to enjoy their rental unit as they see fit, provided they do not significantly interfere with or unreasonably disturb others. Under the Act, a tenant is also responsible for the conduct of his or her guests. If others are unreasonably disturbed by a tenant or by persons permitted in the unit by the tenant, there are provisions under the Act to deal with this.*

Atira is binding case law. The landlord did not provide copies of any relevant city or other bylaws or references to the bylaw numbers regarding requirements for identification. The tenant indicated that not all of his guests possess identification. I find this requirement to be particularly onerous against the tenant and unreasonably restrictive towards his guests. I similarly find that restricting the tenant's guests during certain hours is unreasonable. Regardless of whether the tenant signed a policy requiring him to restrict visitors to certain hours, the landlord did not provide a copy of this policy and the tenant does not recall signing it. The landlord did not provide sufficient evidence to show that the tenant's guests have violated section 47 of the *Act*, which I noted earlier in this decision, to justify restriction of the tenant's guests to certain hours or to justify requiring some form of identification.

Accordingly, I find that the landlord's policies of requiring any identification or restricting the hours of access of the tenant's guests, to be unreasonable and unenforceable against this tenant. I find that the landlord was attempting to contract outside of the *Act* by having the tenant sign an agreement to limit visitors during certain hours and by attempting to enforce a policy about identification. I find that policies such as those that the landlord is attempting to enforce against this tenant, violate section 30 of the *Act*. As such, the landlord cannot substantiate its 1 Month Notice on the basis of such policies.

In any event, I do not find the above incidents described by the landlord, to be the cause of serious jeopardy to the health or safety or lawful right of the landlord or other occupants. I also find that the above incidents are not a significant risk to the landlord's property. Accordingly, I find that the landlord did not provide sufficient evidence, on a

balance of probabilities, to demonstrate that the tenant or his guests seriously jeopardized the health or safety or lawful right of the landlord or other occupants or put the landlord's property at significant risk, as per section 47(1)(d)(ii) or (iii) of the *Act*.

Summary

For the reasons outlined above and on a balance of probabilities, I find that the landlord did not provide sufficient evidence to demonstrate that the tenant or his guests "significantly interfered with" or "unreasonably disturbed" the landlord or other occupants, as per section 47(1)(d)(i). I also find that the landlord did not provide sufficient evidence to demonstrate that the tenant or his guests "seriously jeopardized" the landlord's or other occupants' health or safety, as per section 47(1)(d)(ii). I further find that the landlord did not show that the tenant or his guests put the landlord's property at significant risk, as per section 47(1)(d)(iii).

I am not satisfied that the landlord has met its onus, on a balance of probabilities, to end this tenancy for cause, based on the reasons in section 47(1)(d)(i), (ii) or (iii).

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice, undated, with an effective move-out date of May 31, 2015. The landlord's 1 Month Notice is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice, undated, with an effective move-out date of May 31, 2015, is allowed. The landlord's 1 Month Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with 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 3, 2015

Residential Tenancy Branch