



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS BENEVOLENCE GROUP and 0955802 BC LTD  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes                      OLC PSF

### Preliminary Issues

Upon review of the Tenant's "Dispute Details" submitted with his application the Tenant wrote that he was requesting my Decision include an allowance for him to make a second application for monetary compensation. He submitted that this request was made in order to comply with the Residential Tenancy Branch's (RTB's) policy to separate monetary order requests from other requests.

Section 58 of the *Residential Tenancy Act (the Act)* stipulates the requirements and provisions for making an application for Dispute Resolution.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this case the Tenant had not made application for a monetary order. Based on the above, I informed the Tenant that there was no need to issue an Order or to stipulate an allowance to grant leave to the Tenant to file a future application for a Monetary Order because the request for a monetary order was not before me and I did not dismiss a request for a monetary order pursuant to Rule 2.3.

The opportunity or allowance to file a future application for Dispute Resolution is provided to both the Tenant and the Landlord pursuant to section 58 of the *Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on July 22, 2015, seeking to obtain an Order that the Landlords comply with the *Act*, regulation, or tenancy agreement and Order the Landlords to provide services or facilities required by law.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Section 1 of the *Act* defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits

occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

The hearing was conducted via teleconference and was attended by the Tenant and an Agent for each respondent Landlord. Each Agent met the definition of landlord, as listed above. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and there were no issues raised regarding service or receipt of that evidence.

During the hearing each party was given full opportunity to provide their evidence orally, to ask each other questions, and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Is this Decision bound by previously issued RTB Decisions?
2. Are the Landlords unreasonably restricting the Tenant's guests from having access to the rental property?
3. Should the Landlord be ordered to comply with the Act, regulation, or tenancy agreement?
4. Has the Landlord terminated or restricted the Tenant's access to a service or facility?

#### Background and Evidence

The Tenant has resided in the SRO (Single Room Occupancy) rental unit since August 14, 2012. The Tenant has access to his single room and to shared washroom facilities and common living areas.

The Tenant referenced RTB Decision dated April 25, 2014 which related to his dispute regarding his former Landlord's visitor policy. The Tenant's request to allow unrestricted access to his guests at that time was dismissed. The Tenant argued that since that Decision was issued a Supreme Court Decision was issued on May 7, 2015 which upheld his arguments that the Landlord could not be restricting access to his guests.

A copy of the Supreme Court of British Columbia Decision *Atira Property Management v. Richardson*, 2015 BCSC 751 issued by The Honourable Mr. Justice McEwan was submitted into evidence by the Tenant.

The Tenant read into evidence section [28] paragraphs 5, 6, and part of 7 from the aforementioned Supreme Court Decision which states, in part:

*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 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 find that any system, however fairly and consistently administered, that entails having a third party send a tenant's arriving guest away without the tenant's knowledge, would constitute an unreasonable restriction unless the tenant was fully agreeable to this process. This tenant is not.*

*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...*

[Reproduced as written]

The Honourable Mr. Justice McEwan also wrote in the aforementioned decision, in part:

*[28] This has been interpreted as a personal right. In RTB decision [number listed], 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:...*

The Tenant read from the May 1, 2015 RTB Decision (file number recorded on the front page of this Decision) in response to the Landlord's evidence submission of a copy of a "Tenant commitment" document, where an Arbitrator found as follows:

*While I accept that the tenant signed the "Tenant commitment" document that states the agreement is not subject to the Act, Section 5 of the Act prohibits the parties to a tenancy agreement from contracting out of the Act and that any attempt to do so is of no effect. (p 5 para 3)*

*Based on the above, I order that the landlord comply with the Act in all matters related to this tenancy.*

[Reproduced as written]

The Tenant testified that despite a change in management of his rental building which was effective December 1, 2014, there has been no change in the guest policy. The current policy only allows guests between the hours of 9:00 a.m. and 10:00 p.m.; does not allow overnight guests; requires guests to show identification; and requires guests to sign in and out in a log

book. The Tenant submitted that these restrictions were in contravention of section 30(1)(a) and section 30(1)(b) of the *Act*.

The Landlords submitted documentary evidence which consisted of copies of: their written submission; the aforementioned "Tenant Commitment" document; page five of a tenancy agreement; 3 pages of media reports; and a document listing log entries related to this Tenant.

The Landlords did not dispute the Tenant's submission regarding their current guest policy. They asserted that this policy was needed for the safety of all of their tenants and guests. The Landlords argued that their guest policy was in support of their municipal police department policies as well as their municipal SRO (single room occupancy) by-laws. Copies of those by-laws were not submitted in the Landlord's documentary evidence.

The Landlords confirmed that all guests are required to show identification and write their name and the unit number of the guest they are visiting into their visitor's log. The Landlords submitted that they keep the visitor logs so that in case of a fire they know how many people were inside the building. That way they would not have to continue looking in spaces for anyone once everyone was accounted for if they did have to evacuate.

The Landlords asserted that they carefully monitor the arrival and departure of all guests in order to restrict known criminals from entering their building. They submitted that earlier this year there was an incident where two people who were not tenants were murdered by a non-resident(s) or guest(s) inside their building.

The Landlords stated that they were confused by the Tenant's conflicting information. They submitted that the Tenant wants unrestricted access for his guests and then reports to the media that he has concerns about dangerous people coming into the rental building.

The Landlords asserted that all tenants are responsible for their guest's behaviours. They testified that they know they can evict a tenant with one month notice under the *Act* if there are problems with a tenant's guests. They stated it was for those reasons that they record issues in their incident report log.

The Landlords argued that they have never refused access to the building for any guests of this Tenant. Upon further clarification the Landlords confirmed that this Tenant's guests are restricted to visiting between the hours of 9:00 a.m. and 10:00 p.m.; they must show identification; and his guests must sign in and out in the visitor log.

The Tenant submitted arguments that his guests have been refused access. He testified about a specific incident which occurred on July 6, 2015. He stated that he had been scheduled to assist his guest in a hearing scheduled with the RTB at 9:00 a.m. on July 6, 2015 and he had requested that his guest be allowed entry at 8:30 a.m. The Landlords' staff refused his guest

access to the building which prevented him the opportunity to properly prepare for that 9:00 a.m. hearing.

The Tenant argued that the safety issues submitted in the Landlords' evidence regarding the double murder and illegal activity relate to the Landlords' reduction in night staff and not their guest policy. He submitted that the Landlord reduced their night shift staff from January 2, 2015 to March 15, 2015 which is when the murders occurred.

The Tenant submitted there were two separate requirements: (1) the landlord has the responsibility to secure the building; and (2) the tenants have responsibility for their guests. He argued that there are provisions in the *Act* for the Landlords to deal with tenants or their guests who are not acting reasonably and there are also provisions in the *Act* and the law which allow unrestricted access for his guests.

### Analysis

The *Residential Tenancy Act* (the *Act*), and the Regulation stipulates the provisions regarding residential tenancies as follows:

#### Regarding Authority to Hearing and Decide Disputes

Section 58(2) of the *Act* provides in part, that if the director receives an application under subsection (1), except:

- (a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,
- (b) the application was not made within the applicable period specified under this Act, or
- (c) the dispute is linked substantially to a matter that is before the Supreme Court.

Section 91 of the *Act* stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law (also known as case law) is law which is created when a judge issues a decision in which they state the meaning or interpretation of a law, statute, or regulation. Common law includes Supreme Court Decisions relating to RTB Decisions issued in accordance with the *Act*.

#### Regarding Previously Issued RTB Decisions

Section 64(2) of the *Act* stipulates that 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.

Section 5 of the *Act* prohibits the parties to a tenancy agreement from contracting out of the *Act* and that any attempt to do so is of no effect.

### Regarding Restricting Access

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

The *Residential Tenancy Regulation Schedule* section 9(2) provides the landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

B.C. Supreme Court Decisions: *Atira Property Management v. Richardson*, 2015 BCSC 751 issued by The Honourable Mr. Justice McEwan.

### Regarding Ordering a Landlord to Comply with the *Act*

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

### Regarding Service or Facilities Required by Law

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

Section 1 of the Act defines **service or facility** to include any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- (a) appliances and furnishings;
- (b) utilities and related services;
- (c) cleaning and maintenance services;
- (d) parking spaces and related facilities;
- (e) cablevision facilities;
- (f) laundry facilities;
- (g) storage facilities;
- (h) elevator;
- (i) common recreational facilities;
- (j) intercom systems;
- (k) garbage facilities and related services;
- (l) heating facilities or services;
- (m) housekeeping services;

### The April 25, 2014 RTB Decision

Upon review of the April 25, 2014 RTB Decision which dismissed the Tenant's previous application for unrestricted access for his guests, I conclude that that Decision has no bearing on this Decision, pursuant to section 64(2) of the *Act*. I make that conclusion in part after

consideration of the May 7, 2015 BC Supreme Court Decision, *Atira Property Manager v. Richardson*, 2015 BCSC 751.

The May 1, 2015 RTB Decision

Although I am not bound by the May 1, 2015 RTB Decision I am in agreement with the findings and Orders put forth in the May 1, 2015 RTB Decision as they relate to the "Tenant commitment" document.

After review of the evidence before me which included a "Tenant commitment" document, I also find that this document constitutes contracting out of the *Act* and is therefore of no force or effect, pursuant to section 5 of the *Act*.

Restricting Access

I accept the Landlords' submissions that their intention with having a visitor policy may have been driven by their desire to provide a safe living environment for the occupants. I agree that such a policy may assist the municipal police and other first responders in doing their jobs. However, I note that if there were such municipal SRO by-laws or policies stipulating such a policy, such municipal by-laws or policies would not excuse or supersede the *Act* or Common Law.

The Tenant is correct in his submission that the Supreme Court Decision *Atira Property Management v. Richardson*, 2015 BCSC 751 establishes Law regarding the interpretation of section 30(1)(b) the *Act* and Section (2) of the *Regulation Schedule*.

I accept the Tenant's submission that the Landlords have the responsibility to secure the building and a tenant has the responsibility for their guest(s)' actions. Any methods taken to meet those responsibilities must comply with the *Act*. Accordingly, I conclude that the Landlords' visitor policy which restricts the Tenant from having guests between the hours of 9:00 a.m. and 10:00 p.m.; requires guests to show identification; and sign in a visitor log, to be unreasonably restricting the Tenant's guests' access to the rental unit, in breach of section 30(1)(b) of the *Act*.

Based on the foregoing, I hereby Order the Landlords to comply with the *Act*, *Regulation*, and tenancy agreement and to provide unrestricted access to the rental unit for the Tenant's guests effective immediately and for the duration of this tenancy.

Provide Services or Facilities Required by Law

Although the Tenant applied for an Order to have the Landlords provide services or facilities required by law, there was no evidence indicating that the Landlords had breached section 27 of the *Act*. Accordingly, this request is dismissed, without leave to reapply.

Conclusion

The Tenant was successful in proving that the Landlords' visitor policy was in breach of the *Act* and *Regulations* and the Landlords were ordered to allow unrestricted access to the rental unit for the Tenant's guests effective immediately and for duration of this tenancy.

The Tenant's request for an Order to have the Landlords provide services or facilities required by law was 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: August 17, 2015

---

Residential Tenancy Branch



