



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Women's Resource Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, AAT, LRE, OLC

Introduction

This hearing was convened to address a claim by the tenant for an order of possession. Both parties participated in the conference call hearing and acknowledged that they had received each other's evidence.

At the hearing, the landlord advised that their corporate name was incorrectly identified in the application. The parties agreed that the landlord's name should be corrected on the application and the style of cause reflects that change.

Although the tenant applied for an order of possession, at the hearing, the parties agreed that the tenant has possession of the rental unit. At the hearing, the tenant identified the 2 primary issues listed below and the landlord acknowledged that these were the issues which they had come prepared to address.

After the hearing had concluded, I was advised that the Residential Tenancy Branch had received 6 additional pages of evidence from the tenant the day before the hearing. As the tenant was required to submit all evidence 14 days before the hearing in accordance with the Rules of Procedure, I have not considered that evidence.

Issues to be Decided

Should the landlord be restricted from having access to the rental unit or should the landlord's right to enter the unit be restricted?

Should the landlord be ordered to comply with the Act and prevented from placing restrictions on the tenant's guests?

Background and Evidence

The parties agreed that the tenancy began on October 27, 2015. The rental unit is a single bedroom in a building in which the tenant shares a kitchen, bathroom and shower facilities with up to 56 other women. The landlord testified that the building provides accommodation to women who are marginalized through poverty, homelessness, substance abuse, mental and physical health issues and violence and exploitation. The tenant did not disagree with this characterization of the mandate of the residence. The landlord testified that many of the residents have experienced violence at the hands of men and the tenant acknowledged that she too has experienced such violence.

The tenant claimed that in the first week of her tenancy, she returned to the unit to discover that someone had entered the unit while she was away. She testified that she knew someone had entered the unit because upon leaving, she had placed a bandaid across the door which was displaced when she arrived home. She further testified that shortly thereafter, she was crying in her room when a staff member entered uninvited and sat on her bed, asking personal questions. The tenant stated that she had to ask the staff member to leave and she later complained to the landlord about this staff member's actions. The tenant further testified that on another occasion, someone broke a key in her door lock in what she assumed was a failed attempt to enter the unit. JR, the tenant's witness and advocate testified that on yet another occasion, he was alone in the room speaking on the phone with the tenant when someone attempted to enter the room using a key.

With the exception of the incident in which the staff member entered the room to speak with the tenant, the tenant testified that she was unsure whether it was staff members entering her room or a previous tenant who had the key to the lock.

The landlord testified that her staff members do not enter rental units uninvited unless they have given proper written notice or when there is an emergency. The landlord entered into evidence footage from the security cameras showing that no one entered the tenant's room at the time the tenant claimed that a staff member had illegally entered her room. The landlord testified that when the tenant advised that the key was broken in the lock, they understood that it was the tenant's key which had broken and they re-keyed the lock, providing the tenant with a key to the new lock. The tenant insisted that although the key she was originally given was replaced by the landlord after the lock was repaired, the lock is the same lock and it is still possible that a former tenant has a key. The landlord insisted that the lock is a new lock.

The tenant argued that the landlord has wrongfully restricted her ability to have guests in the rental unit. She testified that JR visits her daily to assist her with daily activities

and she has asked him to come into the shower room with her and into the bathroom because she occasionally has panic attacks and is worried that the landlord will enter the bathroom while she is inside. The tenant testified that the landlord has written her several letters about leaving JR unattended and has made him unwelcome in the building. JR testified that the tenant has asked him to remain in her room while she steps out because she is concerned that people are trying to break into the room while she is away. The tenant testified that she occasionally sees other unaccompanied men in the building and feels JR is being singled out by the landlord.

The landlord testified that JR is permitted to use the common washrooms, but he has showered on at least one occasion and because so many of the women in residence have experienced violence, the landlord does not want JR to be unattended when he is not using the washroom and expects the tenant to remain with him at all times. JR denied having showered in the residence. The landlord testified that many women in the building are uncomfortable seeing an unaccompanied man because of their past experience of violence. They entered into evidence videotape showing JR on other floors of the building and going into the kitchen and returning with food. JR testified that he has only been on other floors to use the washrooms when the second floor washrooms were busy and stated that he took the food from the kitchen at the request of the tenant, who had been heating the food therein. The landlord testified that when they are made aware of an unaccompanied man in the building, they find out who he is visiting and ask that resident to ensure that he is accompanied in the future.

The tenant and her witness JR testified that on one occasion, they came to the building whereby JR was advised that he had been banned from the building for one week. The landlord claimed that this was because the tenant had reported to the landlord that JR had assaulted her. The tenant haltingly testified that JR did not assault her "at that time" and that she had simply told the landlord that she and JR were not speaking to one another.

The tenant further testified that then landlord denied her mother and sister entry into the building and told another guest that she had to leave because the tenant already had a guest visiting.

The landlord acknowledged that they have a policy whereby tenants are restricted to having one guest in their rooms at any given time. The landlord claimed that the policy is in effect because of the small size of the rooms. The landlord denied having denied entry to the tenant's mother and sister.

Analysis

As the tenant already has possession of the unit, I dismiss the claim for an order of possession. Such an order would give the tenant the right to occupy the unit which she is already doing and is therefore unnecessary. The matters at issue are whether the landlord's right to access the unit should be restricted and whether the landlord should be permitted to place restrictions on the tenant's guests.

The tenant claimed that a staff member entered her room without permission but the landlord presented video evidence showing that no one entered the tenant's room at the time she alleged the incident occurred. I find the evidence of the landlord to be persuasive and I find that the tenant has failed to prove that the incident occurred. I find insufficient evidence to show that the landlord ever entered the room illegally and there is insufficient evidence to persuade me that anyone has tried to enter the room without permission. I find it more likely than not that the landlord did indeed replace the lock when the key was broken inside and that the tenant now has a lock which cannot be opened by a previous tenant using an old key. I have arrived at this conclusion because the tenant surrendered her old key, which would have not been required had the lock remained the same. I find that the tenant has failed to prove that the landlord has failed to comply with the requirements of the Act with respect to entry into the rental unit and I find no reason to believe that the rental unit is not secured. I therefore dismiss the claim for an order restricting the landlord's right to enter the rental unit and permitting the tenant to change the locks.

Section 30 of the Act provides as follows:

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

30(1)(a) the tenant of a rental unit that is part of the residential property, or

30(1)(b) a person permitted on the residential property by that tenant.

This provision does not absolutely prevent a landlord from restricting a tenant's guests from access to the residential property, but states that the landlord must not *unreasonably* restrict access. It is clear to me that the legislature contemplated that there would be circumstances under which it would be reasonable for a landlord to restrict access to a tenant's guests. I therefore must determine whether any of the restrictions put in place by the landlord are unreasonable with respect to this tenancy.

The landlord stated and the tenant did not dispute that the residential property is unique in that it provides housing only to women and that these women are marginalized through poverty, homelessness, substance abuse, mental and physical health issues

and violence and exploitation. The landlord testified that within the past several months there have been several instances of residents of the building being assaulted by visitors and as many of the residents of the building, including the tenant, have experienced violence at the hands of men, I find it reasonable that the landlord maintains strict control over which men enter the building and ensures that they are accompanied at all times by the resident they are visiting. In their written submissions the landlord stated that some residents have no contact orders against another party, so the landlord asks visitors to provide identification. While this type of restriction may not be reasonable in other circumstances, I find it to be completely reasonable in this building.

I accept the landlord's testimony that they have not singled out JR as an unwanted guest, but ensure that every male guest is accompanied by the person who invited them onto the property. The tenant provided no evidence to dispute this assertion and the practice makes sense in the circumstances.

I also accept that the landlord acted reasonably in banning JR from the premises for one week. I accept the landlord's testimony that they chose to ban JR because the tenant reported that he had assaulted her. Although at the hearing the tenant claimed that she did not tell the landlord that she had been assaulted "at that time," I did not find her testimony to be as believable as that of the landlord. The tenant was in my view dishonest when she testified that a staff member had entered her room illegally as the landlord's video evidence directly rebutted that allegation and therefore where her testimony conflicts with that of the landlord, I prefer the evidence of the landlord. The tenant's hesitation in her testimony and unwillingness to assert that she had never reported that JR had assaulted her leads me to believe that she has on occasion reported that JR assaulted her. I find it very probable that this was one of those occasions. I find that the tenant reported that JR had assaulted her immediately prior to the occasion on which he was banned from the premises and I find that the landlord's response to this report was both reasonable and judicious.

I find that the landlord has not unreasonably restricted JR's access to the building. Going forward, the tenant should ensure that she is with JR at all times when he is in the building and should he need to use a washroom on a different floor, the tenant should accompany him, although she may wait outside the washroom should he require privacy. JR is free to continue to assist the tenant upon her request with showering and may stay with her in the washroom if she requests that he do so, but he should never be in the shower area by himself. The tenant should not leave JR alone in her room, except to make quick visits to the washroom. Under no circumstances should JR remain in the building when the tenant is not in the building. I note that these

restrictions are not designed to suggest that JR himself is a threat to the tenant or to other residents. The landlord is obligated in my view to provide a secure environment in accordance with their mandate and unfortunately as some of the residents are understandably fearful of men, JR and other male visitors should expect that they may not act as freely and independently inside the building as they may outside.

With respect to the landlord's practice of limiting the number of guests who can visit the tenant at one time, I am not persuaded that a policy of permitting just one guest at a time is a reasonable restriction. The landlord claimed that this was implemented because of the small size of the rooms, but I was given no evidence that 3-4 people could not fit comfortably into a room for a visit. If a tenant in the building were to invite several people into her room and they were unable to shut the door to avoid disturbing others or if they were creating an unreasonable amount of noise or taking much of the seating in common areas, the landlord is free to ask that some of the guests leave. However, in the absence of an actual disturbance or fire hazard due to excessive numbers of people in the rooms, the landlord should not restrict the number of guests to one at a time. I find that the one guest restriction is unreasonable and is therefore unenforceable.

Conclusion

The claim for an order of possession is dismissed. The landlord is ordered to comply with section 30 of the Act and only restrict guests where it is reasonable in the circumstances to do so.

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: December 31, 2015

Residential Tenancy Branch

