



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Community Builders Benevolence Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, OLC, AAT

Introduction

This hearing concerns an application by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and an order instructing the landlord to allow access to (or from) the unit or site for the tenant or the tenant's guests. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located within a single room occupancy ("SRO") hotel. This application is closely related to a previous application filed by the tenant with regard to which a hearing was held on August 13, 2015, and a decision issued by date of August 17, 2015. The decision of August 17, 2015 addresses the dispute between the parties, which principally concerns the landlord's guest policy / visitor policy. The Analysis portion of that decision reads, in part:

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 supersede or excuse a landlord from having to comply with the Act.

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.

Further, the Conclusion aspect of the decision of August 17, 2015 reads, in part:

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.

In summary, in his current application the tenant claims as follows:

- 1) that the landlord's guest policy has "affected" his right to quiet enjoyment between October 01, 2014 and January 01, 2016;
- 2) that following the decision of August 17, 2015, the landlord "started to refuse [his] guests altogether;" and
- 3) that following from the above, he is entitled to i) compensation of \$916.00, which is calculated on the basis of \$2.00 per day from October 01, 2014 to January 01, 2016 (458 days); and ii) compensation from January 02, 2016 to February 16, 2016 (the date of this present hearing) "in the event that the Landlord continues to ignore that order up to the day of the hearing."

Analysis

Based on the considerable documentary evidence, and the affirmed testimony of the parties, my findings are set out below.

I note that testimony and documentary evidence submitted by the tenant in support of this application, concern not only his tenancy, but also reflect his broader concerns as an advocate for other tenants in the building. However, the tenant is the only named applicant in the dispute before me, and my findings are limited to the subject tenancy.

Monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement

I find that the tenant had the option to include an application for compensation as part of his application which was heard on August 13, 2015 and decided on August 17, 2015. In this regard, the Preliminary Issues aspect of the decision of August 17, 2015 reads, in part, as follows:

....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.

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.

In summary, the tenant had the option to seek related compensation in the previous application, but explained that his understanding of the RTB's policy led him to choose not to do so. Following from the above, the attention of the parties is drawn to Rule of Procedure # 2.9 which provides as follows:

2.9 No divided claims

An applicant may not divide a claim.

I find that compensation sought by the tenant in his current application is a reflection of his undertaking to divide the claim which was broadly addressed during the hearing of August 13, 2015, and determined in the decision of August 17, 2015. It is a well-established principle as part of the *res judicata* doctrine, that a party may not divide a single or indivisible claim, or cause of action into separate parts and bring separate suits upon it, either in the same court, or in separate courts or jurisdictions. This is referred to as claim splitting.

In any event, I find that the tenant has failed to meet the burden of proving that the landlord has enforced the guest policy / visitor policy on specific occasions with respect to his tenancy during the period(s) of time at issue. For example, I find that the Affidavit # 1 sworn by the tenant's son and submitted in evidence is limited to only broadly addressing concerns about the landlord's guest policy / visitor policy. Following from all of the foregoing, this aspect of the application is hereby dismissed.

Order instructing the landlord to comply with the Act, Regulation or tenancy agreement

Order instructing the landlord to allow access to (or from) the unit or site for the tenant or the tenant's guests

As previously noted, in the decision dated August 17, 2015 the Arbitrator ordered as follows:

....I hereby Order the Landlord 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.

I find there is insufficient evidence of specific occasions to support the allegation that the landlord's guest policy / visitor policy has been enforced with respect to the subject tenancy, or that subsequent to the decision of August 17, 2015, the landlord has "started to refuse [the tenant's] guests altogether." Accordingly, I find that there is no requirement for the order(s) previously issued to be re-issued, and this aspect of the application must also therefore be dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety.

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: March 08, 2016

Residential Tenancy Branch

