



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order that the landlord allow access to the unit and that the landlord comply with the Act, regulations and/or the tenancy agreement.

A hearing was conducted by conference call in the presence of the agent for the tenant and in the absence of the landlord although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. The tenant produced evidence that the Application for Dispute Resolution was sent, by registered mail to where the landlord resides. There is a notation on the envelope stating the landlord has refused to accept the package. I determined the landlord has been sufficiently served with the Application for Dispute Resolution even though she has refused to pick up the package. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order that the landlord allow access to the unit and that the landlord comply with the Act, regulations and/or tenancy agreement.

Background and Evidence

The tenancy began on May 1, 2016 after the parties entered into a written term tenancy agreement with a month to month term. The tenancy agreement provided that the tenant(s) would pay rent of \$985 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$492.50 on April 12, 2016.

The agent for the tenant produced evidence that the landlord is interfering with access to the rental property by the tenant's guest and is intimidating the tenant through misrepresentations and other actions to get the tenant to give 30 days notice.

Analysis:

Section 30 of the Residential Tenancy Act provides as follows:

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.

Section 9(1) of the Schedule to the Residential Tenancy Act Regulations which is included in the tenancy agreement provides as follows:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) 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.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

Section 52 of the Residential Tenancy Act provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Section 28 of the Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I made the following determinations:

- The demand that the tenant give the landlord a 30 days notice is not a termination notice as it is not in the approved form.
- The landlord must have cause to serve a one month Notice to End Tenancy on the Tenant.
- The presence of a guest including an overnight guests in the rental unit is permitted by the Act and Regulations and the landlord must not unreasonably restrict access to the property by a person permitted on the property by the Tenant. Based on the evidence presented by the Agent for the Tenant I determined that at the present time the agent for the Tenant is living elsewhere. As a result he is a guest and not a resident.
- The landlord alleged in a letter to the Tenant that anyone who stays in a tenant's suite for a period exceeding the allowable (10) days per year (either consecutively and/or cumulatively) are considered to be trespassing. I am not able to find any provision in the tenancy agreement, the Residential Tenancy Act and the Residential Tenancy Act Regulations that supports this statement. The Act and Regulations do not put a limitation on the number of days per year a guest can visit a tenant.
- The tenant has a legal right to serve a Notice ending the tenancy should she wish as this is a month to month tenancy. The landlord has a right to serve a one month Notice to End Tenancy if the landlord has cause. However, in my view

the landlord's action is sending letters demanding that the tenant give her a 30 days notice is not appropriate and may very well be a breach of the covenant of quiet enjoyment.

- Parts of the Addendum to the tenancy agreement may violate the Act and Regulations. I determined it is not appropriate to make a determination as the Tenant failed to include such a request in the Application for Dispute Resolution and the landlord was not present at the hearing.

Determination and Orders:

As a result I made the following orders:

- a. That the landlord shall not unreasonably restrict the Tenant from having guests including overnight guests.
- b. The letter(s) which includes in the captioned Notice of Termination of Tenancy is of no force and effect as a Notice to End Tenancy given by the Landlord as it is not in the approved form.
- c. The landlord shall refrain from demanding the Tenant give 30 days notice.

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 14, 2016

Residential Tenancy Branch