



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

AAT, O, OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested the landlord be ordered to comply with the Act, that access to and from the rental unit by the tenant and his guests be allowed, that guests not be forced to leave identification with the landlord and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

At the start of the hearing evidence was reviewed. The landlord said they received the hearing documents and 11 pages of evidence. The tenant said he served 26 pages of evidence with the hearing documents, given on July 31, 2016. The tenant supplied a note signed by a landlord staff member, confirming receipt of the documents. The number of pages served was not included in that declaration.

As there was a dispute regarding the number of pages given to the landlord the tenant was told specific documents would be identified during the hearing and if there was any dispute regarding evidence the tenant would be at liberty to make oral submissions in relation to the documents.

The landlord submitted an August 15, 2016 letter in which the owner of the 68 unit building asked that the hearing be adjourned. The owner is out of the country and had the ticket booked prior to service of the notice of hearing. The manager present at the hearing said she has worked for the owner for the past three years. The manager stated that the owner needed to be at the hearing as this is a small business.

I referenced section 7.8 of the Residential Tenancy Branch (RTB) Rules of Procedure, which provides:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party*

The tenant said it would be unfair for him to wait for another hearing date. The tenant said that the manager present was able to deal with the issues and that it would be stressful to wait for another hearing date.

The manager then began to respond to the tenants' application; at which point I determined that the manager was more than able to make submissions on behalf of the landlord. Further, the landlord was given notice of this hearing on July 31, 2016 and had ample time to arrange to have an agent present; which he has effectively done by having the manager attend. I find that the request for adjournment would not lead to resolution of the matter and that the landlord has neglected to ensure another agent of his choosing could attend the hearing. The tenant has waited a considerable period of time for this hearing date and further delay would prejudice the tenants' right to a hearing of matters that he submits are affecting his tenancy.

Therefore, I declined the request for adjournment and the hearing proceeded.

Issue(s) to be Decided

Is the tenant required to pay a \$20.00 fee for any overnight guest?

Must the guests of the tenant be required to leave their identification with landlord staff at the front desk for the duration of any visit?

Background and Evidence

The tenancy commenced on August 1, 2013. Rent is currently \$650.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$250.00. On October 1, 2016 the rent will increase by \$19.00, as a notice of rent increase in the

approved form has been issued. A copy of the rent increase notice was supplied as evidence.

The tenant supplied a copy of the building guidelines signed by the tenant at the start of the tenancy. The rules require:

“Overnight extra person rent of \$20 per person from 8:00PM to 8:00 AM are obligatory for all visitors – no exceptions.”

(Reproduced as written)

The tenant said he has only paid this sum on one occasion but he does not want to be approached with requests for payment. The tenant submits he should not have to pay to have a guest stay overnight.

The tenant also does not believe the landlord should be able to force his guests to leave personal identification with the front desk staff. The tenant does not object to guests having to show their photo identification to staff, but leaving documents with staff should not be required.

The landlord said that they provide basics such as toilet paper, daily cleaning of bathrooms, utilities and bi-weekly cleaning. When the tenant has guests he should pay for the additional use of services that result in costs to the landlord. The tenant has signed, agreeing to make a payment for guests. The landlord could not find any evidence that the tenant has ever paid this fee. The landlord said the tenant has recently had a guest stay for 20 nights.

The landlord responded that they run a building in a high risk area and that they have been told by the police they should check and retain identification of all guests.

Analysis

There was no dispute that this is a tenancy in a 68 unit building. The tenant rents a room and shares a bathroom with others. Rent is paid monthly, a rent increase has been issued in accordance with the Act and the landlord is holding a security deposit; all of which I find support a tenancy.

I have considered section 30 of the Act, which provides, in part:

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.

The Act does not provide any restriction on a tenant in relation to having guests enter their rental unit. However, the landlord has included a term in the guidelines signed at the start of the tenancy, which places a restriction on visitors, by imposing a daily fee. The guidelines are silent in relation to additional occupants.

I have considered the guideline related to overnight visitors against section 5 of the Act; which provides:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In order to enforce a clause of a tenancy agreement, or tenancy guideline in this case, the terms must comply with the legislation. Section 6 of the Act sets out enforcement of tenancy agreement terms:

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].

(3) A term of a tenancy agreement is not enforceable if

*(a) **the term is inconsistent with this Act or the regulations,***

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

(Emphasis added)

As the guideline requires the tenant to pay a fee for any overnight visitor I find that the term fails to comply with section 30 of the Act and that, pursuant to section 5 of the Act, the term is an attempt to contract out of the Act.

A tenant cannot be barred from having guests and the imposition of a fee would, by any reasonable standard, accomplish just that. The Act does not permit the imposition of a fee payment for the right to have overnight visitors. Therefore, as the term is not

consistent with the Act, I find pursuant to section 6(3) of the Act that the term/guideline for visitors is not enforceable.

In relation to the requirement that visitors leave their identification with the landlord during the time they are in the building visiting, I find that this requirement interferes with the tenants' right to have visitors come and go unimpeded. The tenant has not objected to the requirement that visitors must show picture identification to the landlord; therefore I have not made any finding in relation to that requirement. However, the legislation does not provide any opportunity for a landlord to essentially seize the identification of those who visit a tenant. If the police have suggested the landlord retain visitor identification I can find no support for this in the Residential Tenancy Act.

Therefore, I find that the holding of visitor identification is contrary to the Act and, pursuant to section 6(3) is not enforceable. The landlord may well have reasons for holding the identification but the legislation does not confer this right.

As the tenants' application has merit I find pursuant to section 72 of the Act that the tenant is entitled to recover the \$100.00 filing fee which may be deducted from the next months' rent due.

I note that the landlord present at the hearing was fully able to respond to the tenants' application. The manager was well aware of the policies imposed on tenants.

Conclusion

The landlord may not charge the tenant a fee for visitors to his rental unit.

The landlord does not possess the right to retain identification of those who visit the tenant in his rental unit.

The tenant is entitled to recover filing fee costs.

This decision is final and binding and 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: September 19, 2016

Residential Tenancy Branch