Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, OLC, O, FF

Introduction
This hearing dealt with applications by the landlord and the tenant. Both parties appeared through their representatives. No issues regarding the exchange of evidence were identified and witnesses gave affirmed evidence for both sides.

The tenant's application was to set aside a rent increase, which related to the addition of a fee for basic cable service in the tenant's room and the credit to be applied for the withdrawal of the personal security service.

On its' application for dispute resolution the landlord stated that: "The landlord has advised the tenant that it will not be cancelling her cable subscription nor adjusting her rent from the present amount". The landlord's lawyer said something similar at the beginning of the hearing yet the landlord wanted the hearing to proceed on all issues. The first witness for the landlord was the board secretary who made it clear that it was the landlord's intention to withdraw cable services if the tenant did not pay the additional fee.

Not all of the witnesses were able to be heard in the time set aside for the hearing so it was continued on November 17, 2016.

At the continuation the landlord appeared without its' lawyer. The board chair advised that in the interim both the board secretary and the board treasurer had left the board. The board chair also advised that they wished to settle the dispute regarding cable fees. They were prepared to refund the tenant the sum of $105.00 which represented the cable hook-up fee of $35.00 plus $70.00 for the loss of cable services for October and November. They also advised that the monthly rent of $1697.00 would include basic cable service and the personal security service to the tenant's room. The tenant's representatives said this was what they had wanted all along. The board chair also advised that they needed a decision on their application which was for an order prohibiting the tenant's representatives from being on the premises or limiting their contact with other tenants or board members.

I went ahead with the hearing on November 17 but only heard evidence that related to the landlord's application

Issue(s) to be Decided
Should an order be made against the tenant's representatives and, if so, on what terms?

Background and Evidence

The tenant is a 95 year-old-woman who lives in a residence operated by a non-profit society. The landlord is part of a larger umbrella organization that operates similar homes throughout the province and the country. There are ten residents in total in the building, all very elderly like the tenant. She has lived there since October 1, 2013.

The tenant was represented in this hearing by her daughter and son-in-law, who are also her power-of-attorney and designated agent respectively. This couple had volunteered at this home as part of the St. John Ambulance Therapy dog programme for fourteen years before the start of this tenancy. They were so impressed with the facility and its' operation that when the tenant required different accommodation they chose this place for her. They continued to visit the home every week in this capacity after the tenancy began and still do so.

Recently there has been a lot of controversy involving the tenant's representatives and the board of directors of this facility.

In January 2016 the landlord imposed a rent increase of $200.00 per month. This was the first rent increase since the tenant had moved into the building. The tenant's representatives challenged that rent increase at the Residential Tenancy Branch and in a decision dated April 25, 2016, the arbitrator found that:

- This rental agreement falls within the jurisdiction of the *Residential Tenancy Act* (RTA) and therefore the Residential Tenancy Branch (RTB).
- The monthly rent was $1650.00.
- The rent increase was illegal because it was greater than the amount allowed by regulation.

This ruling, which does appear to have been appealed, caused great consternation for the board members, who had always operated on the understanding that they because of the nature of the services provides to the residents that they were a health care facility and therefore exempt from the RTA.

On May 26, 2017 the landlord issued and served the tenant with a Notice of Rent Increase effective September 1, 2016 of $47.00 – an amount within the 2.9% increase allowed for 2016.

On June 20 the landlord wrote all the tenants saying they were rolling back the rent because of the RTB decision and advising that:

> "As a cost saving measure there will be changes to some services. The contract states that cable is included however; the service will revert to the original arrangement of provision in the common area. We are pleased that we are able to provide service to individual units . . .for only $30.00 per month. Any resident wishing to have cable service in their unit must pay for this extra service at a rate of $30.00 per month effective 1 August, 2016."

(While the cable fees were still an issue the board treasurer explained that originally cable television had only been provided in the common room. At some point prior to the signing of this particular tenancy agreement cable was provided to each individual room and by 2009 the arrangement was that for all residents but one in-room cable was included with their rent.)

Attached to the letter was a form for completion by each tenant. The form gave tenants four options. The options varied in the manner in which the illegal increase of $200.00 per month would be handled by the tenant until the legal rent increase would come into effect. In the first three scenarios effective September 1 the rent would be $1697.00 plus an additional charge of $30.00 for cable. The final option was that effective September 1 the rent would be $1697.00 and no cable.

On June 21 the tenant's daughter wrote the board chairperson expressing her concerns about the proposed change in fee structure, suggesting that the board's actions were not consistent with the legislation, and indicating her willingness to go back to arbitration, if necessary. She sent an e-mail expressing similar concerns to the board chairperson on June 23. She did not receive any response.

On June 23 the tenant's daughter put a letter, in an envelope, to each resident for their sponsors' consideration. The note was quite short. It said:

> "The letter regarding cable TV does not comply with Provincial regulations and has to be on an approved form. Also, there must be a rent reduction if there is a reduction in services, not an increase. This matter is under dispute and may be going to the Residential Tenancies Branch for a ruling.
>
> I recommend that neither you nor your sponsor sign the form attached to the subject letter. Doing so may reduce your rights in a hearing."

The note closed with the daughter's name and telephone number.

The tenant's representatives testified that this was the only notice they ever distributed and that they did so out of concern for the financial well-being of the other elderly residents of the building. They also point out that since the landlord does not give out the names of the residents' sponsors the only way to communicate with the sponsors was to leave the note in each resident's room.

Their evidence is that after this note was delivered they received a visit from the police. The police officer told them that a complaint had been filed by the brothers who were witnesses in this hearing. The basis of their complaint was the note. The police did not take any other action.

The landlord convened a meeting on June 30. It was contentious. Several witnesses gave evidence about this meeting, which is set out later in this decision.

On August 18 the tenant's representatives filed for Dispute Resolution.

On August 19 the landlord served the tenant with a "Notice Terminating or Restricting a Service or Facility" effective October 1, 2016. The notice advised that the in-room cable and personal security service was being withdrawn and the tenant's rent would be reduced by $33.30 in compensation. It also directed that: "Going forward, if there are any further considerations that your family wishes to raised with the [landlord], we direct you to [the landlord's lawyer]."

The tenant's daughter responded with an angry letter to the chairperson dated August 30.

On September 16 the landlord filed an application for dispute resolution which stated:

> "The tenant has permitted her son-in-law . . and daughter . . onto the residential property and both individuals have, on multiple occasions, significantly interfered with or unreasonably disturbed the other tenants . . as well as .. board members contrary to s.28 (b)(d) of the Residential Tenancy Act. . . .
> The Landlord seeks an order that [the tenant's daughter and son-in-law] not be permitted on the . . .premises without the written consent of the landlord or, alternatively, an order that when on the premises neither [the daughter or the son-in-law] will have any contact with the other tenants or any Board member at . . and any communication from the [daughter and son-in-law] should be directed, in writing only, to the landlord's counsel . . "

In support of the application for this order the landlord led the following evidence.

A statement from the former board secretary was filed. Although she was present on the first day of the hearing she did not attend on the second day and did not testify in person. She described the son-in-law's behaviour at the June 30 meeting as angry and aggressive including raising his voice, arguing, interrupting, and threatening arbitration. She said that this occurred in front of another resident and her sponsor, as well as a staff member who was upset. She says that the son-in-law tried to engage her in an argument in front of a resident.

The son-in-law testified that he not only did he not have this conversation; he does not know who this person is. His evidence is that when he stated that they had concerns the board treasurer told him to "Go to arbitration". At that point the tenant, her daughter and her son-in-law were ushered out of the meeting. The tenant went to her room. Her daughter and son-in-law and the board members, except the board treasurer, then had a separate meeting. No other residents or family members were present during that discussion.

A board member who was present at that meeting testified that the son-in-law was very upset and may not have been aware of his demeanour. He described the son-in-law as loud and intimidating. He said that other sponsors and residents were in the dining room. The tenant's family were ushered out of the dining room to move any loud conversation away from the dining room.

No other board members testified about the son-in-law's conduct at this meeting.

The former board secretary's other complaints about the tenant's family were that they had asked staff members to deliver letters to the board; wrote a letter of complaint to the head of the umbrella organization; complained to the Senior's Advocate; complained to the diocese that bears the same name as this home, and threatened to go to the media.

Some of the other statements made in this letter are about events that occurred before she joined the board or that she did not witness herself. She said she resigned the board because of the stress of the situation.

The sons of one resident testified in very emotional terms about their mother's situation. They described their mother as 91 years old, with very poor short-term memory and mild dementia. They described her as being more agitated since early in 2016. Her doctor had prescribed her some medication to help her get through the night.

One son testified that on August 21 at around 7:00 am he received a call from his mother's caretaker. The caretaker had told his mother that the kitchen was locked and she was very upset. The caretaker explained to the son that someone had filed a complaint with the health board and residents were not longer allowing into the kitchen because they did not have food-safe training. He testified that there was no advance notification of this change. The witness testified about the negative impact the kitchen closure had on his mother.

He testified that early the following morning he was walking to the home when he encountered the son-in-law. The two men had a brief conversation. The witness said that when he mentioned the kitchen closure to the son-in-law, the son-in-law responded that he knew; he had called the health authority to get back at the landlord. From this encounter he deduced that this was the man who was the source of all the trouble and controversy at the home that had so upset his mother.

The son-in-law testified that he did meet this witness and they had a brief exchange. He testified that he referred to the controversy at the home but he did not say that he had complained to the health authority. The witness said that in fact they were disappointed when the kitchen was closed because his mother-in-law is hypoglycemic.

The board chairperson testified that the changes to the kitchen came after several incidents in the kitchen and a period of consultation with the health authority and their own network of residences. When they decided to close the kitchen to residents they were the last home in their organization to do so. She said that before they changed their policy board members spoke to residents twice about the impending change and a notice was posted on the kitchen door.

When asked, the chairperson was very clear that the change had not been precipitated by a complaint to the health authority.

The same son testified that on September 4 his mother's caretaker called him again. That night his mother had packed up her entire apartment because she was convinced she was being evicted. Her doctors prescribed her anti-psychotic medication a few days later.

The other son testified that he was walking with his mother outside at 5:50 pm on August 26. At one point in their conversation she grabbed his hand; snuggled up to him; and said that she didn't like the dogs and the man scares her. This witness understood this to be a reference to the son-in-law.

He also testified that none of the board members had spoken to them about the tenant's family; they had no knowledge of "what they were up to" until his brother's encounter with the son-in-law; and they only knew that there had been a complaint about the rent increase.

Both sons expressed appreciation for the service provided by the landlord and support for the board. They also said that a letter had been slipped under their mother's door in the spring or summer.

The daughter of another resident testified. She described her mother as 89 years old and suffering from some dementia (limited short- term memory). She was very offended that the tenant's family had slipped a note under her mother's door about rent increases. She said this note was her first interaction with the couple. The only other interaction which she referred to was the meetings for tenants and their families. She has had no contact with the tenant. The witness said she found a second sheet of paper dated June 20 in her mother's room about the cable TV. Neither document was filed in evidence. This witness gave emphatic support to all actions taken by the board including the rent increase and whole-hearted disapproval of the tenant's family disturbing the peace of the home by challenging the rent increase.

The written evidence from the tenant's representatives stated that on several occasions, when they met with representatives of the board or the umbrella organization, the response to their concerns was to suggest that the tenant should find another place to live.

Analysis

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act,* and arbitrators can only make the orders permitted by the statute.

The landlord based its' application on section 28 which sets out a tenant's right to quiet enjoyment including but not limited to, rights to "(b) freedom from unreasonable disturbance" and (d) use of common areas for reasonable and lawful purposes, free from significant interference". As explained in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment* under the common law the right of quiet enjoyment relates only to tenants, not landlords.

This section is in the part of the act titled “During a Tenancy”. This part of the legislation contains sections that relate to the rights and responsibilities of landlords and tenants during a tenancy.

Another section that is relevant to this dispute is section 30(1) which states that a landlord must not unreasonably restrict access to the residential property by the tenant or a person permitted on the property by the tenant.

If there is a problem with the people permitted on a residential property by a tenant the usual remedy is for the landlord to seek to end the tenancy pursuant to section 47; which allows a landlord to end a tenancy by giving notice in the prescribed form if the tenant, or a person permitted on the residential property by the tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant.

Although the legislation sets out many orders that may be made by an arbitrator it does not specifically set out the ability to make an order banning someone from a residential property. The only section that may be argued to give an arbitrator the authority to make the order requested is section 62(3) which states that an arbitrator “may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or a tenant comply with this Act, the regulation or tenancy agreement and an order that this Act applies”.

Although I am not convinced that I have the authority to make the order requested by the landlord it is not necessary for me to make that determination because, even if I did have the authority, I would not grant the landlord’s request.

It is clear that the RTB decision had an enormous impact on this board and presented them with a very difficult challenge. There would have been a lot of discussion about the financial challenges faced by the board, and inevitably, there would have been some discussion/speculation about the home’s long-term viability. These possibilities would have been very upsetting to the elderly residents and to their families who were happy with the service provided to their elders.

Although no one acknowledged that there was communication between individual board members (past or present) and other tenants or their families about the tenant and her family, it is clear that there was a lot of discussion about the RTB decision; the people who filed that application for dispute resolution; the ongoing controversy about services to be provided and fees to be paid; and these two applications for dispute resolution. An indication of the strong feelings caused by the RTB decision and the people who filed that application was the demeanour of the former treasurer when she gave her testimony.

However, the evidence does not establish that the tenant or her family were the source of all, or indeed any, of the information that upset members of this community, including the three witnesses who are not board members.

The son's testimony about the kitchen closure, the lack of notice for the closure and the reason for the closure was contradicted by the chairperson's testimony. As a result I cannot accept his version of the conversation between him and the son-in-law. As far as the rest of their evidence, given their mother's health condition I cannot simply accept what she may have said to them at face value without some other corroborating evidence. There is none. Further, the sons had formed an antipathy to the tenant's family before the incidents in August, as evidenced by their complaint to the police, so they may have been inclined to interpret their mother's comments from that perspective.

Only one witness said two letters had been placed under her mother's door. All the other witnesses gave the same testimony as the tenant's family – only one letter was distributed and that was about the proposed cable TV fees. As I result I must conclude that there was only the one note and that was about the proposed cable fees.

The evidence establishes the following complaints against the tenant's family:

- They successfully challenged the rent increase in a legal forum.
- When the landlord decided to take away a service without following the procedure prescribed by law, they objected by letter and at a meeting for residents and their families.
- They appeared to be very upset and angry at that meeting.
- They complained about the landlord's proposed fee structure and other actions to the Senior's Advocate, the landlord's umbrella organization; and the diocese.
- They distributed one note alerting sponsors that the new cable fees may not be legal. I would point out that the legal information contained in that note was accurate.

Interestingly, although the landlord's witnesses and the landlord's application focused on the upsetting effect the delivery of the note had on the other tenants, the landlord served its' Application for Dispute Resolution and supporting evidence personally on the tenant on September 21; not on her power of attorney or designated agent as had been requested by them in advance and would have been proper legal service of the documents. If a suggestion that the proposed cable fee was illegal was too upsetting for elderly residents, what did the landlord think that the effect of an application to bar her family from visiting her would be on the equally elderly tenant?

It was frequently mentioned that the landlord is administered by a volunteer board. This does not make them an unusual landlord. Many housing facilities of various kinds in this province are administered by volunteer boards.

Further, it must be stated that the fact that its' members are volunteers does not exempt a board that is providing any type of service from:

- compliance with applicable legislation;
- oversight by public authorities, such as the Senior's Advocate; or,
- questions or criticisms from their clients or their clients' advocates.

Even if I had the legal authority to prevent or limit the access of the tenant's daughter and son-in-law to the rental property, I find that their actions have been within the law and thus do not represent either a breach of any other tenant's right of quiet enjoyment or the type of conduct that is referenced by section 47.

I am certain that the legislation does not give me the power to order that all communication between the tenant's family and the landlord must be through the landlord's lawyer.

The landlord's application is dismissed.

Conclusion

a. The tenant's application was settled by the landlord's agreement to refund the tenant the sum of $105.00 which represented the cable hook-up fee of $35.00 plus $70.00 for the loss of cable services for October and November; and to provide basic cable service in the tenant's room and the personal security service as part of the rent.

b. The landlord's application is dismissed.

c. As the tenant was substantially successful on her application she is entitled to reimbursement from the landlord of the $100.00 fee she paid to file it. Pursuant to section 72(2) that amount may be withheld from the next rent payment due to the landlord.

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 08, 2016

Residential Tenancy Branch