



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORTE REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OLC MNDC FF

Introduction

This hearing was convened in response to an application under the *Residential Tenancy Act* (the Act) by the tenant seeking an Order for the landlord to comply with Section 30 of the Act, and respective regulation, monetary nominal compensation for loss, and to recover the filing fee.

Both parties attended the hearing. The tenants and two of the landlord representatives appeared in the conference call and each participated in the hearing via their submissions document evidence and their testimony. The landlord acknowledged receiving the document evidence of the tenant and themselves not submitting document evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be decided

Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?
Is the tenant entitled to the monetary amounts claimed?

Background and evidence

The undisputed relevant evidence in this matter is as follows. This tenancy began in March 2014. There is a written tenancy agreement governing this tenancy of which I have been provided a copy.

The tenant argues one clause in the tenancy agreement (**13 Additional Occupants**, clause 13) unfairly affects having overnight guests because the clause states that occupants other than tenants are limited to 14 cumulative days per year if without prior written consent of the landlord. The tenant wants the landlord to be ordered to cease using the clause in all their

rental agreements, and for the landlord ordered to provide the tenant written notice the clause in their respective tenancy agreement is withdrawn. It must be noted the parties agree there is no pending dispute in respect to the clause. That is, the landlord has not cited the tenant as being in breach of the clause or in any way has acted to enforce compliance with the clause, nor has the landlord, on their own initiative, spoken to the tenant or warned them respecting the clause. The landlord testified the residential property consists of 180 rental units and the intent of the clause is of minor if any significance. The landlord testified that to their knowledge they have not enforced the clause, practically are unable to police it, and do not foresee how they would apply the clause to periodic overnight guests. They do not have the capacity to ascertain the comings and goings of any tenant's guest. The landlord stated, "We do not restrict guests to 14 cumulative days", and "it's never been an issue". The tenant provided references to previous Arbitrator decisions testifying those decisions rejected restriction on the number of overnight stays by a tenant's guest.

The tenant further wants for the landlord to be ordered to provide them with a "fob" for their guests, enabled to open the front lobby door of their building. The tenant disputes the landlord's position that entry of guests into their building is the sole responsibility of a tenant. The tenant argued that Section 30 of the Act compels the landlord to make provision for access to the building for guests of a tenant even in the absence of the tenant: "24 hours/day, 7 days/week, without the precondition that the tenant must be present & awake to allow the Guests to enter the building" – as written. The tenant testified he contacted the Branch and confirmed with the Branch that his position in respect to unqualified access for guests of a tenant is correct. None the less, the landlord's response was that they provide all tenants with security fob devices for secure entry to the building and do not provide similar devices for guests of a tenant. The landlord additionally provided that their buildings are equipped with dedicated intercom systems allowing tenants to permit other persons entry into the building, including guests. The landlord suggested that a tenant could lend their 'fob' to a guest; which the tenant argued is not reasonable as then the tenant would not have it for themselves. The tenant argued that entry by their guests must not be limited if the tenant is unavailable or otherwise unable to permit entry. The tenant argued that for entry of guests to be compromised in this respect is indication the landlord is in contravention of the Act and Act Regulation.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I have carefully considered and reflected on the relevant evidence, issues, and merits advanced in the matter before me. I find as follows.

The Act and the Residential Tenancy Regulation Schedule address occupants and guests. There is an obligation on the landlord to allow a tenant to have guests and not to deny having guests under reasonable circumstances, and not impose unreasonable conditions respecting guests. In this matter I have not been presented evidence allowing me to consider if the landlord has denied or restricted the applicant tenant having guests; or has attempted or acted to enforce limiting conditions pertaining to their guests; or has attempted to enforce unreasonable conditions of guests. The evidence of the parties is that the landlord's clause 13, while in print of the tenancy agreement, is untested, has not been used, and is unused and unenforced by the landlord. If a dispute were to arise in respect to the landlord's clause 13, following a deliberate weighing of the relevant evidence in the dispute it might be found unenforceable and it might even draw pecuniary consideration as the tenant asserts. However in this matter I find no dispute requiring a remedy or allowing me to order the landlord deal with clause 13. As a result, I decline to consider the tenant's request in regards to this portion of their application and effectively it is dismissed. Should the tenant and landlord be confronted with a valid dispute respecting the clause placing the tenancy in jeopardy it is available to either party to file for dispute resolution.

In respect to the balance of the tenant's application the tenant relies on **Section 30** of the Act in arguing the landlord is legally obliged to not impose limiting conditions on a person's access to residential property if a guest. The tenant effectively argued the landlord is legally obliged to provide guests, through the tenant, with an entry device (a fob) so as the tenant is not required to permit them on the residential property.

I find **Section 30** of the Act, in relevant part to this matter, states (**emphasis mine**):

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**.

I find **Section 30** operates to establish entitlement / right to access to residential property by a tenant, and by extension from the tenant to **a person** when **permitted by that tenant**. And, if permitted by the tenant a landlord must then not unreasonably restrict that person's access. I find that Section 30(b) states that the tenant must permit a person onto residential property. I find Section 30 does not create a legal obligation on the landlord to effectively supply a person with an entry device so that a tenant is then not required to permit the entry. In respect to all of the above I find the landlord in this matter is providing sufficient means to the tenant allowing them to permit entry to persons, be they visitors, delivery persons, care aids, couriers, cleaners, or guests of the tenant. I find the landlord is not unreasonably restricting access to residential property or abridging the tenant's right of access. As a result I decline to order the landlord to comply with the Act and find no basis to support the tenant's claim to monetary compensation. Therefore, I dismiss the tenant's application in its entirety.

Conclusion

The tenant's application is dismissed.

This Decision is final and binding on both parties.

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: January 06, 2017

Residential Tenancy Branch