



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order allowing access to the rental unit and residential property.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to be exempted from the landlord's guest access policy, pursuant to Section 30 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in August 2015 as a month to month tenancy for a monthly rent of \$375.00 due on the 1st of each month with a security deposit of \$187.50 paid.

The landlord submitted into evidence a copy of a document entitled Building Rules signed by the tenant on July 29, 2015. The landlord submitted that this document forms a part of the tenancy agreement between the two parties. Neither party provided a copy of a tenancy agreement indicating that there were any addendums to the tenancy agreement.

I also note that the Building Rules document is signed only by the tenant and that there is no reference to the tenancy agreement with the possible exception of Clause 14 which states that "any breach of the house rules may be considered a material breach of your Tenancy and could result in an eviction notice."

The specific clauses in the Building Rules documents affecting the tenant's guest's ability to access the rental unit include:

1. All visitors must check in at the office with valid ID. No one under the age of 19 will be admitted into the building.
2. Guests must not wander from room to room; they must sign in again at the office with their ID if they wish to visit a different tenant.
3. Visiting hours are from 9am until 11pm unless they are accompanied by the tenant.
4. Tenants may have overnight guests for a maximum of two (2) nights a week.
5. A tenant may only have two (2) guests visiting at the same time.

The tenant submitted that the landlord has a policy that unreasonably restricts the tenant's ability to have guests attend his rental unit. The tenant clarified that the policy requires his guests to present and surrender to the landlord their identification. The tenant submitted that the

landlord's policy is unfair, improper, and a hardship. In support of his position the tenant has referenced Supreme Court of British Columbia case 2015 BSCS 751 *Atira Property Management v Richardson*.

The tenant testified that he had his brother from out of town visiting recently but that the brother refused to visit the tenant at the rental unit because he would not give up his identification for any reason to anyone.

The landlord's agents testified that they were familiar with the above noted decision but that the ruling only applied to that specific tenancy and that despite the ruling they continue to enforce their policy with all of their other tenancies.

The landlord submitted that their guest policy is necessary for two reasons. First, the conditions in the neighbourhood where the property is located requires that they provide specific protection to their residents. The landlord submitted that there was a great deal of crime; drug use and violence in this neighbourhood and that the policy was put in place after a shooting in one of their properties.

Second, the landlord submitted that some of the rules were made to ensure that the landlord knew who was in the building and where they were at any given time in case of fire or some other disaster occurred. The landlord submitted that they are also required, by local bylaw, to maintain a log of visitors.

With specific reference to each of the above noted 5 rules the landlords justified the rule for the following reasons:

1. They are required by a local bylaw to maintain a list of guests. They also submitted that the area is known for underage prostitution and so the landlord restricts access to anyone under the age of 19. The landlords testified that they require ID from this tenant's guests, in particular, because he has about 5 people on his "pre-approved list of guests" that have caused problems in the building.
2. Guests are required to "re-sign-in" when they go from one tenant's rental unit to another because they are required to know where everyone is in the building in the case of a fire.
3. Visiting hours are restricted for the safety of all residents due to the problems in the neighbourhood.
4. The tenant is restricted to 2 guests overnight due to the small size of the rental unit.
5. The tenant is restricted to 2 guests visiting at one time due to the small size of the rental unit.

Analysis

I note that the referenced Supreme Court decision was in response to the landlord's application for a Judicial Review of two Residential Tenancy Branch decisions in regard to the landlord's restrictive guest access policy.

That decision upheld the two Residential Tenancy Branch decisions. Those decisions found, in summary, that regardless of the community a tenant lives in they are entitled to the same protections of access as any other tenant in any other neighbourhood. They also found that the landlord's policy infringes upon the tenant's right to have guests and that the landlord's restrictions were unreasonable.

Section 30(1) of the *Act* requires that a landlord not unreasonably restrict access to the residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant.

Residential Tenancy Regulation Schedule Section 9 states:

- (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.
- (2.1) Despite subsection (2) of this section but subject to section 27 of the *Act* [terminating or restricting services or facilities], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

While I heard testimony regarding the above noted guest policies, the tenant seeks only relief from the requirement for his guests to present and surrender their identification.

Despite the landlord's assertion that in regard to the need to collect identification from this tenant's guests because some of his guests have caused problems in the past, I note that the landlord made the tenant sign the Building Rules prior to the start of the tenancy. As such, I find it is unlikely the landlord would have been aware either of who the tenant's guests were going to be during the tenancy or that they had caused problems while visiting him prior to his tenancy.

As such, I am not persuaded that this restriction was put in place as a result of any actions of this tenant or his guests.

Furthermore, I find that even if the tenant did have guests that have caused problems in the residential property before, then the landlord may consider specific restrictions on those specific guests. In addition, if the landlord already knows who these specific guests are that have caused the problems I find there is no need to inspect or retain their identification.

I find the landlord has provided no evidence that the collection of identification for, in some cases, people that are already known to the landlord serves any legitimate purpose. Despite the landlord's testimony, they have not provided a copy of any bylaw requiring the maintenance of a log of guests. However, even if the landlord is required to keep a log of guests to comply with any local bylaw they can simply write the person's name down, they do not need see or take a person's identification.

I find, therefore, that the requirement for the tenant's guests to present and surrender identification is based solely on the landlord's assertion that the neighbourhood where the residential property is located justifies this requirement.

However, while not bound by previous decisions, I concur with my colleagues and I find that Section 30 of the *Act* and Section 9 of the Schedule do not allow for a restriction for guest access to be made based on the neighbourhood. As a result, I find the landlord's restrictions to require guests present and surrender their identification are unreasonable and infringes on the rights granted to the tenant under Section 30 of the *Act*.

Conclusion

Based on the above, I order the landlord must not request guests to present or surrender any identification when visiting the tenant.

While I accept that Residential Tenancy Branch decisions are specific to disputes between a landlord and an individual tenant, I caution the landlord that if they continue to apply a restriction that the Branch has determined is not allowed the Director may impose administrative penalties, pursuant to Section 94.1 of the *Act*.

Section 94.1 also stipulates that if a corporation contravenes the *Act* or the regulations or fails to comply with a decision or order, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under this section even though the corporation is liable for or pays a monetary penalty under this section.

Section 94.2 of the *Act* stipulates that administrative penalties include a monetary penalty of up to \$5,000.00 per day.

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 10, 2017

Residential Tenancy Branch