



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRANVILLE ENTERTAINMENT GROUP (DOING BUSINESS AS SIESTA ROOMS)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC OLC PSF

Introduction

Both parties, witnesses and an advocate attended the hearing and gave sworn testimony. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain orders pursuant to sections 27, 28, 30 and 31 that the landlord obey the Act and protect his quiet enjoyment by allowing entry to his guests and removing unreasonable restrictions;; and
- b) To remove restrictions on his female guest 'J.' to the use of the women's washroom in the building.

Preliminary Issue:

The tenant amended his application to change the landlord's name. The landlord said the amendment should not be granted as their name is correct on the original application and it is the same as on the lease. The tenant said he applied to amend the name for he works for the company and has seen many of the same employees. I find the evidence of the lease persuasive. The landlord's name is not amended.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord is violating the Act by unreasonably restricting his guests' entry and restricting his guest 'J' from using the women's washroom?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in March 2014, it is now a month to month tenancy, rent is \$425 a month and a security deposit of \$212.50 was paid. The tenant said the landlord had restricted entrance of his guests, particularly the female 'J', to those who could produce valid Government identification. He contended this placed unreasonable restrictions on his guests contrary to section 30 of the Act and violated his quiet enjoyment contrary to section 28. He provided in evidence a Notice that was posted in the hallway of the building reminding all tenants that "all guests must show proper identification at the office before being allowed to enter the

building...Photocopies of I.D. or the name already on the list of guests are not acceptable... No I.D. No admittance. This policy is for the safety and security of all tenants and is non-negotiable”.

The tenant also took issue with the landlord denying a key to the female washroom to his female guest, J. He said she felt unsafe using the unisex washrooms and wanted the privacy of using the locked female washroom. The tenant's advocate submitted that the female washroom is included in the definition of residential property and it is part of the common area. The tenant noted he is only requesting removal of restriction on his female tenant J's entry into the women's washroom as he has no knowledge of how unreasonable the restriction might be for other female guests.

The landlord submitted it is not a common area as it is exclusively for the use of female tenants. They submitted that they had offered J a key if she decided to live there for a short time to assist the tenant when he was ill. They pointed out that they have many vulnerable people in the building such as women from abusive situations and they needed the security of a locked washroom. They noted that they have 6 washrooms in total, all with locks on bathroom stalls and locks on showers. Four of them are unisex and they submit they would legally have the right to have them all unisex but as a courtesy to their female tenants, they provide two female washrooms with outer door locks to which they are given keys. They said persons using the unisex washrooms have privacy and security in the locked individual stalls.

The tenant's advocate said the locks on the unisex stalls are not as good as the landlord states and could be pushed in. There is no lock on the outer door of the unisex washrooms. The landlord said they have had no complaints about any problems in the unisex bathrooms and if they had, this would be grounds for eviction. They emphasized that each unisex bathroom has a number of individually locked stalls and showers which, in their opinion, are secure. In response to a query, the landlord noted that they had two issues two years apart which are not related to the unisex washrooms. In one case a tenant walked into another tenant's unit by mistake and the second involved a tenant who had a mental health issue and was evicted.

The landlord said they accept various forms of identification such as Government issued I.D., Treaty Cards, or Ministry stamped photocopies of documents. They apologized for the more restrictive Notice in the hall and said it would be removed and as the manager got to know regular guests, he would likely need to have less identification. They explained a new manager had taken over and he did not know the usual guests of tenants so he had to be strict and ask for I.D. They agreed they had been more lax about 4 years ago but when a guest assaulted a tenant, they had to impose stricter requirements. The landlord agreed that this particular tenant and his guests have never posed a problem in the several years he has been there.

The tenant's advocate said the old policy had worked better. The tenant requests that his guests, especially the female J., be exempted from the policy to produce I.D. to visit him. She does not have sufficient funds to replace I.D. and would find it very onerous to stand in line to get a Ministry stamped photocopy. The advocate requests exemption for the female J. to allow her to obtain a key for access to the women's washroom. She pointed out some previous arbitrator's decisions and some Supreme Court decisions on sections 28 and 30 of the Act.

The landlord distinguished the facts in the *Richardson* decision from this case. He said they have never held or retained guests' I.D.s but if they can't identify the guests at entrance, this poses a risk to other tenants and property. They pointed out that most rental buildings have rules and regulations that tenants

must obey. They also submitted that the women's washroom is not common property as submitted by the tenant's advocate as it is not shared by all tenants. It is provided as a courtesy to female tenants who wish to use it rather than the unisex washrooms. The tenants' female guests are free to use the unisex washrooms. They do not understand why the tenant's guest, J., cannot use the unisex bathrooms or why she would need more privacy for showers as she allegedly has her own apartment and facilities.

Included with the evidence is the lease, the tenant's notarized statement, arbitrator's decisions and the BCSC decisions.

Analysis:

As explained to the parties in the hearing, I am not bound by previous arbitrators' decisions although it is preferable that they be consistent. However, I am bound by Supreme Court decisions. In *Atira Property Management v. Richardson*, 2015 BCSC 751 (the *Richardson* decision), Mr. Justice McEwan notes that examples drawn in *Rutherford v. Neighbourhood Housing Society*, 2012 BCSC 2177 (the *Rutherford* decision) from other Residential Policy decisions, while not binding, show an approach to section 30(1) (a) and (b) of the Act that is focussed on the individual, and on whether anything done by the *individual* justifies a reasonable restriction by the landlord. He noted the issue was simply whether a blanket policy restriction on tenants is a reasonable restriction under the Act. I find in *Rutherford*, Bruce J. found a tenant who has limited resources and maybe forced into certain neighbourhoods is entitled to the same standard and according to section 28 of the Act to be free from unreasonable disturbance. William J. in *Berry v. British Columbia Residential Act Arbitrator* 2007 BCSC 257 (the *Berry* decision) described the Act as "a statute which seeks to confer a benefit or protection upon tenants". He notes in these circumstances, ambiguity in language should be resolved in favour of the persons in that benefitted group.

The tenant in this case before me is relying on section 30 of the Act:

30(1) A landlord must not unreasonably restrict access to residential property by [emphasis mine]

- (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 [emphasis mine].

While the landlord may be reasonably restricting access to some persons for security reasons as they said, I find in this case that the landlord has submitted insufficient evidence supporting that restricting entry of this tenant's guests is reasonable. The landlord agreed that neither this tenant nor his guests have caused any problems in the over 3 years he has lived there.

I find the landlord has a duty to protect the tenant's quiet enjoyment, including freedom from unreasonable disturbance pursuant to section 28 of the Act. I find in this case the landlord is unreasonably disturbing the tenant by unreasonably restricting access to the building to his guests, especially the female guest, J., by requiring her to produce I.D. which is onerous for her. I find the weight of the evidence is that the landlord knows J. as she has visited the tenant numerous times and there have been no problems noted with the tenant or J. I find in accordance with the Supreme Court decisions noted above, a blanket policy is an unreasonable restriction when applied to this individual tenant and his guests. I order the landlord to allow access to the tenants' guests, especially his friend J, without the requirement of producing photo or other identification.

The tenant's advocate submitted the same basis for exemption of the restriction to the women's washroom. She submitted this was common property as defined in the Act. The landlord submitted it

was not common property; there were two locked washrooms available only to female tenants for security and safety reasons due to alleged abusive backgrounds among other problems. He pointed out that there were 4 unisex washrooms with lockable stalls and showers and tenants' female and other guests were free to use these. I find the Act defines '**residential property**' as, among other things, the building, its parcel of land and the rental unit and common areas. '**Common area**' is defined as "any part of residential property, the use of which is shared by tenants, or by a landlord and one or more tenants". Contrary to the landlord's submissions, I find using a beneficial interpretation as suggested in *Berry*, the women's washroom is included in the definition of common area and part of the residential property as it is shared by tenants. While the landlord expressed concern for the vulnerable women tenants and pointed out that the landlord may have to resort to all unisex washrooms, I find I am limited to the case before me which concerns the individual tenant and J. his guest who have been no problem in the past. I am also bound by the Supreme Court decisions. While some female guests may or may not be reasonably restricted from use of the female washroom at some time, I find insufficient evidence that J. has caused any problems so there is no reasonable grounds for her restriction.

For the reasons cited above, I find the landlord may not disturb the tenant's peaceful enjoyment by unreasonably restricting his guest, J.'s, use of the women's washroom while she is visiting as there is insufficient evidence of good reason for restriction. To address the landlord's concern for the safety of his vulnerable population, I hereby order that J. must return the key immediately to the landlord after use and not admit other guests to the female washroom.

Conclusion:

The tenant is successful in his application. **The landlord is ordered to allow the tenant's guests unrestricted access to visit him without mandatory production of I.D. and unrestricted access to his female friend J to the women's washroom while visiting. I order J. to promptly return the key to management after use and not permit others without a key to enter using her key.**

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: November 15, 2017

Residential Tenancy Branch