



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS BENEVOLENCE GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC OPT AAT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") seeking an order of possession for the rental unit, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to seek an order allowing access to the rental unit and residential property.

The tenant and an agent for the landlord ("agent") attended the teleconference. The parties were affirmed and provided testimony and were provided the opportunity to present their documentary evidence. Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matters

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

At the outset of the hearing, due to the tenant confirming that he remains in the rental unit and the agent confirming that the tenant is not being evicted, I find the tenant's application for an order of possession to be moot and is dismissed as a result. There is no dispute that the tenant continues to occupy the rental unit.

### Issues to be Decided

- Is the tenant's tenancy agreement now a month to month agreement?
- Is the tenant entitled to an order to be exempted from landlord's requirement for guests to show and/or present identification pursuant to Section 30 of the Act?
- Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

### Background and Evidence

The landlord submitted in evidence a copy of a tenancy agreement dated December 7, 2017 which indicates the tenancy is a fixed term tenancy which requires the tenant to vacate by January 1, 2018. While both parties testified that they realize the law has changed effective December 11, 2017, and that in this situation the tenancy reverts to a month to month tenancy after January 1, 2018, I will explain further below as to why this is the case.

The remaining issues for the tenant that the tenant wanted addressed at this hearing which was indicated in the "Details of Dispute" portion of the application, is that the tenant did not want his guests to be restricted or be required to provide or surrender identification as requested by the landlord.

During the hearing, the agent testified and submitted a letter which reads in part:

"In regards to [the tenant's] dispute about guests, he is welcome to have guests, our only requirement is that they sign in at the office. All tenants are welcome to have overnight guests. Management requests that they sign in so we know who is in the building in case of fire and for the mandatory 24 hour wellness checked required of staff as per SRO guidelines. There has also been an exceptionally high amount of overdoses at [name of building] since the opioid crisis has become so prevalent in Vancouver. It is not uncommon for staff to find non tenants overdoses in the shared washrooms. It is in theses cases that we need to know which guests are visiting which room. [The tenant] is welcome to have overnight guests we just ask that he let the office know who they are."

[Reproduced as written except for anonymizing the name of the tenant and the rental building]

The agent then went on to testify that in addition to writing down the guest name to "check in" they are also required to show their identification as the landlord needs to make sure the name matches their identification. The tenant stated that the need for identification should not be required as many disenfranchised people do not have identification or can't afford to pay for new identification if it is lost, etc.

A copy of the rules that the tenant was required to sign and to which the agent read from during the hearing called "Tenant commitment" includes the following which I have numbered for ease of reference below:

1. I will not bring any unregistered visitors into the building and I will not allow visitors to remain overnight/after 10 pm.

[Reproduced as written]

The tenant submitted that the landlord this policy that unreasonably restricts the tenant's ability to have guests attend his rental unit especially if they don't have identification as they are not permitted in at all. The agent did not address the discrepancy between #1 above which clearly does not allow guests overnight or past 10 pm, yet the agent testified that guests are allowed overnight and past 10 pm, which the tenant stated in practice, is not being permitted by those on staff in the building.

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, done without authority and is not proper. In support of his position the tenant has referenced in a decision submitted in evidenced Supreme Court of British Columbia case 2015 BSCS 751 *Atira Property Management v Richardson*.

The agent relented that identification does not have to be surrendered but does have to be shown and that guests are not permitted just to sign in without identification. The agent stated that they operate the building based on their "SRO Building Owners' Manual", a copy of which was not submitted in evidence.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

The referenced Supreme Court decision was in response to a landlord's application for a Judicial Review of two Residential Tenancy Branch ("RTB") decisions in regard to a landlord's restrictive guest access policy. That decision upheld the two RTB decisions. Those decisions found 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. It was 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. In addition, 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.

The tenant is seeking relief from the requirement for his guests to present and/or surrender their identification, confirmation in writing that the tenant is permitted to have overnight guests, and confirmation that his tenancy agreement is now a month to month tenancy.

There was no evidence from the agent presented to me that the tenant's guests have been problematic or that the landlord is seeking to evict the tenant. As such I find the landlord has breached 30(1) of the *Act* by unreasonably restricting 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.

The landlord has provided insufficient evidence that the collection of identification is for a legitimate purpose. For example, if there is a fire in the building, having a person write their name will provide the same number of people as having guests provide identification. Therefore, I find that the requirement for the tenant's guests to present and surrender identification to be a breach of section 30(1) of the *Act*. I also note that the document the tenant was required to sign is inconsistent with the testimony of the agent as the agent claims the overnight guests are permitted yet the document indicates that are not.

I also note that while I am 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 or type of building. As a result, I find the landlord's restrictions to require guests present and surrender their identification and to not stay overnight are unreasonable and infringes on the rights granted to the tenant under Section 30 of the *Act*.

Therefore, **I ORDER** that the landlord **effective immediately must not** request guests to present or surrender any identification when visiting the tenant.

In addition, **I ORDER** that the landlord **effective immediately must not** restrict guests from staying overnight.

Pursuant to section 41(1) and 44(3) of the *Act* and section 13.1 of the regulation, the one month fixed term tenancy automatically reverts to a month to month tenancy as the laws have changed effective December 11, 2017. The new law applies to existing tenancy agreements.

Conclusion

The tenant's request for an order of possession is moot and dismissed. The remainder of the tenant's application is successful.

The tenancy agreement as noted above has reverted to a month to month tenancy.

I have ordered that the landlord effectively immediately must not request guests to present or surrender any identification when visiting the tenant. I have also ordered that the landlord that effectively immediately the landlord must not restrict guests from staying overnight.

I also note that RTB decisions are specific to disputes between a landlord and tenant I caution the landlord that if they continue to apply a restriction that the RTB has ordered must not continue, the Director may impose administrative penalties, pursuant to Section 95(3) of the *Act*. The maximum penalty for an administrative penalty under is \$5,000.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: January 25, 2018

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Residential Tenancy Branch