



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTERN COMMUNITY SENIORS LOW-COST HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

On December 10, 2018, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") for an order for the Landlord to comply with the *Act*, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, represented by two members of the Board (the "Landlord"), and the Tenant, represented by the Tenant, her Advocate and a support person (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Should the Landlord be ordered to comply with the *Act*?
- Is the Tenant entitled to the recovery of the filing fee of her application?

### Background and Evidence

The undisputed evidence is that the tenancy commenced May 1, 2006, as a month to month tenancy, rent is \$468 a month (as subsidized), and a security deposit of \$150 was paid at the outset of this tenancy.

The Tenant testified that the Landlord has been making her sign a new tenancy agreement every year since 2006 and that there was no vacate clause that would have allowed the Landlord to require her to resign every year. The Tenant testified that she was given no choice and had to sign the new tenancy agreement each year, as it was linked to her yearly rent subsidy application.

The Landlord agreed that they did have residents sign a new tenancy agreement each year, but that they never pressured a resident to sign if they did not want to and there is an internal dispute process if a resident is unhappy about something. The Landlord also agreed that the signing of a new tenancy had been linked to yearly rent subsidy application, but that they have realized that this practice is inconsistent with the Residential Tenancy *Act* and will no longer ask tenants to sign a new tenancy agreement as part of their yearly rent subsidy application.

The Tenant has requested that, all the tenancy agreements she signed between 2007 to 2018 be voided, and that her tenancy reverts to her original tenancy agreement signed on 2006. The Tenant submitted her 2006, 2017 and 2018 tenancy agreements into documentary evidence.

The Landlord disagreed with the Tenant's request, stating that the Tenant had not objected to signing the new tenancy agreements for over ten years and that the current content of the 2018 tenancy agreement, is consistent with the one she signed in 2006.

The Tenant testified that the Landlord had put new terms into the subsequent tenancy agreements, and that is why she wanted them voided.

The Tenant testified that the Landlord had but limitations on her guests, in the 2018 agreement, setting a cumulative limit of 14-night stay over 12 months. The Tenant testified that her son, who has his own home, will sometimes stay with her when she is unwell, and she is fearful that she might be evicted due to the Landlord's restrictions on guest. The Tenant is requesting that the Landlord be ordered to comply with the *Act* and remove this restriction on the over-night guest.

The Landlord agreed they had written a term into the 2018 tenancy agreement where they set a cumulative limit of 14-night stay over a 12-month on guests.

The Tenant also testified that the Landlord had put restrictions on the use of the building intercom system, into the 2018 tenancy agreement. The Tenant testified that the term in the tenancy agreement states that tenants were to ensure that no one buzzed them for building access between the hours of midnight and 8:00 a.m. The Tenant is requesting that the Landlord be ordered to comply with the *Act* and provided 24hr access to the building intercom system.

The Landlord agreed that they had written a term into the 2018 tenancy agreement that tenants are not to use the building intercom system between the hours of midnight and 8:00 a.m. as there is a resident whose bedroom is on the other side of the intercom system and the noise from the system disturbs his sleep.

The Tenant testified that she does not want to disturb the resident living in that unit. However, she feels that her family and personal support person should still be able to visit her during the restricted hours. The Tenant testified that she had suggested a compromise to the Landlord, by requesting a second key to the front door of the building so her family and support help could access the building during the restricted hours without having to use the intercom system.

The Landlord testified that there is a process for making an official request for a second building access key and that the Tenant would have to fill out the required request form.

The Tenant testified that she had filled out the required building access key request form but that the Landlord had refused to give her a second key. The Tenant testified that she would be content if she could get a second key to the front door of the building.

Additionally, the Tenant testified that the Landlord regular comes to her door, requiring access to her rental unit and asking to speak to her. The Tenant testified that she feels pressured to let the Landlord in with no written notice. The Tenant is requesting that the Landlord issue proper written notice before knocking on her door to ask for access to the rental unit.

The Landlord testified that they only knock on the Tenant's door due to official business and that the Tenant had never told them they were not welcome inside the rental unit when they asked to come in, so they never issued written notice.

The Tenant testified that she agreed that she had never told the Landlord "no" when they asked for entry, as she did not realize that she could refuse the Landlord's request.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the testimony of these parties and the tenancy agreements submitted into documentary evidence. I find that there is no evidence before me that the Tenant had been pressured into signing a new tenancy agreement. I find the Tenant would have been within her rights to refuse to sign a new tenancy agreement when the Landlord asked and should have had she not wished to sign the agreement.

Therefore, I find that the Tenant and the Landlord entered into a legally binding contract when they signed the tenancy agreement in 2018. However, the Tenant was reminded, during these proceedings, that the 2018 tenancy agreement is a month to month tenancy and that she does not have to sign a new tenancy agreement with the Landlord if she does not want to in the future.

Furthermore, the Landlord was cautioned, during the hearing, that any attempt to contract contrary to the *Act* was not legally enforceable pursuant to section 5 of the *Act*, which states the following:

#### **This Act cannot be avoided**

**5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The Landlord was also advised, during the hearing, that the *Act* does not allow a landlord to require that the tenant sign a new tenancy agreement each year and that sections 14(a), 16(v), and 18(iv) of the 2018 tenancy agreement could be seen as an attempt to contract contrary to the *Act*.

Also, I accept the testimony of both parties that the Landlord has restricted the use of the building intercom system. Section 27 of the *Act* states the following:

#### **Terminating or restricting services or facilities**

**27** (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that the building intercom system is an essential service and that the use of that service should not be restricted by the Landlord. I acknowledge, the reason beheld the Landlord's imposed time restrictions; however, no matter how understandable the reason behind the restriction, the Landlord must never restrict an essential service. Accordingly, I find that the Landlord is in breach of section 27 of the Act by restricting the Tenant use of the building intercom system between midnight and 8:00 a.m. daily.

I understand that it may take some time to resolve the conflict between, the Tenant's right to access to the essential service, of the building intercom system, with the right to quiet enjoyment of the individual living in the unit adjacent to the intercom system.

I find the Tenant has made a reasonable offer of compromise, in her request to be supplied with an extra building key to allow her family and personal support access to her rental unit during the Landlord's imposed restriction times. Therefore, I order the Landlord to provide the Tenant with a second building access key

Finally, I find that there was no justification in ordering the Landlord to comply with section 29 of the Act, as there is no evidence before that the Landlord had breached the Act when they knocked on the door of the rental unit and the Tenant granted the Landlord access. However, the Tenant was reminded during these proceedings that she has the right not to answer the door when the Landlord knocks and that even if she answers the door, she does not have to grant access to the Landlord or any of the Landlord's agents, unless proper written notice of entry had been provided to her in advance. Section 29 of the Act has been included in this decision for both the Tenant and the Landlord's reference.

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in her application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for her application. The Tenant is allowed to take a one-time deduction of \$100.00, from her next month's rent.

Conclusion

I order the Landlord to comply with the *Act* and in particular sections 5, 27, and 30.

I also order the Landlord to provide the Tenant with a second building access key.

I grant the Tenant permission to take a one-time deduction of \$100.00, from her next month's rent

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: May 7, 2019

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Residential Tenancy Branch