



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE KETTLE ON BURRARD and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, PSF, LRE, AAT, MNDC

### Introduction

On April 29, 2019, the Tenant applied for dispute resolution seeking the following relief:

- for an order that the Landlord provide services or facilities required by law.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to suspend or set conditions on the Landlords right to enter the rental unit.
- for the Landlord to allow access to the unit for the Tenant.
- For a monetary order for money owed, or compensation for damage or loss.
- For the Landlord to comply with the Act, regulations, or tenancy agreement.

The matter was scheduled for a teleconference hearing. The Landlord's agent ("the Landlord") and the Tenant appeared at the hearing. The Tenant was assisted by an advocate. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

At the start of the hearing the Tenant withdrew the following issues:

- for an order that the Landlord provide services or facilities required by law.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.

- to suspend or set conditions on the Landlord's right to enter the rental unit.
- for a monetary order for money owed, or compensation for damage or loss.

### Issues to be Decided

- Is the Tenant entitled to an order that the Landlord to comply with the Act, Regulations, or tenancy agreement?
- Should the Landlord be ordered to allow access to the rental unit?

### Background and Evidence

The parties testified that the tenancy began on May 1, 2018, on a month to month basis. Rent in the amount of \$420.00 is due to be paid to the Landlord by the first day of each month. A security deposit of \$187.50 was paid by the Tenant to the Landlord.

The Landlord testified that the rental property is a 16-story supportive housing project containing 140 units for people at risk with mental health and addiction conditions. The Landlord testified that they provide a safe place for the tenants to live; and due to the vulnerability of the occupants, the Landlord has security measures in place.

The Tenant is seeking unrestricted access into the rental property for her and her guests. The Tenant testified that she must go through two separate locked doors to gain access into the rental building. She testified that it is challenging for her to get in and out of the rental building without delay and this presents a hassle. The Tenant testified that she does not have a key to access the building and she must signal a security person who sits at an office next to the main door to be buzzed into the building. The Tenant testified that she was not informed of the building security arrangements before she entered into the tenancy agreement. She testified that the elevator requires a key fob and she cannot access another Tenants floor.

The Tenant testified that the security measures in place at the rental building are unreasonably restrictive to her having guests. The Tenant testified that her guests must be signed in and out of the building and must be accompanied at all times. The Tenant testified that her guests must leave identification at the security desk. She testified that she is required to come down to the entrance to permit guests into the building. She testified that her guests have no means of contacting her when they arrive unless they have a cell phone. The Tenant testified that she has friends who were not permitted access into the building because they did not want to leave identification or did not have identification. She testified that having food delivered to her is difficult because of the restrictive rules.

In reply, the Landlord provided testimony confirming that tenants of the building must be buzzed into the building by a security person who is present 24 hours per day. The Landlord testified that a Tenant does not have to be buzzed out and can leave the building without any issue or delay. The Landlord testified that he feels bad that there may be delays for entry; however, he stated that there is no unreasonable delay.

The Landlord testified there is a second locked door that gives access to the elevators.

The Landlord provided testimony that all tenants of the rental property are informed of the Landlords policies, including the security measures for entering the building, prior to entering into a tenancy agreement. The Landlord testified that most tenants like the safe and secure building. The Landlord testified that in the five years that they have operated the building, there have been many unauthorized people who were not visiting occupants attempt to enter.

With respect to the guest policy, the Landlord provided testimony that there is an intercom system that guests can use to call up to a Tenants suite. The Landlord confirmed that they ask tenants to accompany their guests at all times while on the property. The Landlord confirmed that they ask guests to provide and leave identification. The Landlord testified that having guest identification helps them know when a guest has left the rental property. The Landlord testified that they need to know who is in the building. The Landlord testified that there have been assaults in the building and identification assists them to identify people involved. The Landlord testified that they provide a service to assist people, including guests to get identification if they want help.

The Landlord testified that the Tenant signed off on the Landlords policies when she signed a Guest and Good Neighbor Policy on April 17, 2018. The Landlord testified that the property is a supportive housing site and therefore there are safety and security policies. The Landlord did not provide a copy of the Guest and Good Neighbor Policy.

### Analysis

Section 5 of the Act provides that Landlords and Tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 28 of the Act provides that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Section 30(1) of the Act provides that 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.*

Section 9 of the Residential Tenancy Regulations provides that a Landlord must not stop a Tenant from having guests under reasonable circumstances in the rental unit; 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.

I have considered the testimony and evidence from the Landlord and Tenant and I make the following findings:

I have reviewed the tenancy agreement provided by the Tenant and Landlord. The agreement provides that the terms of the tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the *Residential Tenancy Act* or a regulation made under the Act or any standard terms.

I find that the Act applies to the tenancy agreement between the Landlord and Tenant. In response to the Landlord's submission that the property is a supportive housing site and therefore there are safety and security policies; I find that the Landlord entered into a tenancy agreement with the Tenant and provides programming as a benefit on a voluntary basis. This is not a situation where the Act does not apply such as a living arrangement made available in the course of providing rehabilitative or therapeutic treatment or services.

I find that the Landlord cannot avoid or contract outside the Act, or Regulations. While the Landlord testified that the Tenant signed a Guest and Good Neighbor Policy on April 17, 2018, there is insufficient evidence from the Landlord to establish this, and in any event any agreement or term and condition of tenancy that is in conflict with the Act or Regulations is unenforceable.

I have considered that many rental buildings that contain multiple rental units have entry doors that are locked. Tenants are provided keys for access into the building. I find this arrangement to be reasonable for the purpose of securing the property from unauthorized persons.

In the case before me, I find that the Landlord's security policy of requiring a security guard to grant the Tenant access into the rental building is unreasonably restrictive. While I accept the Landlord's testimony that the building access policy is required to be able to ensure safety and security for residents due to ongoing issues related to the entry of unauthorized persons, I find the Landlord has provided insufficient evidence to support that their access policy is a reasonable intrusion against the Tenant's rights to privacy and exclusive possession of the rental property free from significant interference. I find that the Landlord's policy is not compliant with Section 28 and 30 of the Act.

The tenancy agreement provides a term regarding guests. The agreement provides that the Tenant agrees that all guests must be registered to an individual's suite and must sign the guest book upon arrival. All guests must be escorted to their suite and must be accompanied while in common areas.

I have considered that most rental buildings that contain multiple rental units with locked entry doors provide an intercom system where a guest can contact a Tenant and be given permission to access the property. I find this arrangement to be reasonable for the purpose of permitting authorized guests onto the property.

With respect to the Landlord's guest policy, I accept the Landlord's testimony that there is an intercom system available for guests to announce themselves; However, I am not aware of any multiple unit buildings that fall under the Act that require Tenants to have their guests sign a list and provide identification. I am not satisfied that the Landlord's policy complies with section 30 of the Act and section 9 of the Regulation which provides that Landlord must not unreasonably restrict access to residential property to a tenant's guest.

I find that requiring a guest's identification and to have them "sign in" is an infringement on the Tenant's right to privacy and exclusive possession of the rental unit and it is also an infringement on the guest's privacy. As such, I find that this requirement is an unreasonable policy and is not compliant with Section 30 of the Act or Section 9 of the Regulation.

With respect to the requirement that Tenant has her guests with her at all times, I find that there may be circumstances where it would be justifiable to restrict access to a specific guest of the Tenant who has caused a disturbance on the property; However, the Landlord has failed to provide any evidence to establish it is reasonable to restrict all guests in this manner or even any of the Tenant's guests. I find that the Landlord is breaching the Tenant's right under Section 30 of the Act.

### Conclusion

Based on the above, I find the Tenant has established the Landlords' policy which restricts access into the rental property; and the policy regarding guest entry and identification is not in compliance with section 28 and 30 of the *Act* and section 9 of the Regulation. I order the Landlord to rescind these policies with respect to the Tenant.

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: October 30, 2019

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Residential Tenancy Branch