Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order requiring the landlord to provide service or facilities required by the tenancy agreement or law pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $1,933.47 pursuant to section 67.

This hearing was reconvened from a previous hearing on February 20, 2020. Following that hearing, I issued an interim decision, in which I adjudicated the preliminary issues regarding my jurisdiction to hear this matter and whether the issues before me were *res judicata* (the "**February Decision**"). In the February Decision, I dismissed a large portion of the tenant's claim on the basis of the principle of *res judicata*, as the parties had taken part in a prior proceeding before a different arbitrator on September 30, 2019 (the "**September Proceeding**").

The tenant attended this hearing and the February 28, 2020 hearing. The landlord was represented at both these hearings by counsel ("**RH**"), as well as its manager ("**DM**") and its director ("**JS**").

In the February Decision, I narrowed the issues I would adjudicate at this hearing to those related to the landlord's non-compliance with the written decision made following the September Proceeding, issued October 30, 2019 (the "**October Decision**").

Preliminary Issue – Adjournment Request

At the outset of the hearing, the landlord's counsel requested an adjournment of this proceeding. She advised me that the landlord had applied for a judicial review of the "prior decision". During the hearing, I understood this mean the landlord has applied for a judicial review of the February Decision, and I proceeded on this understanding. I asked questions of the counsel relating to the application of case law (which I will

discuss below) which considered a stay of a final order, rather than seeking a mid-application adjournment (as I understood to be the case here).

However, upon reflection, it is possible that I misunderstood the landlord's counsel. It is possible that the landlord is applying for judicial review of the October Decision. I note this only to state that, if this is the case, it does not change my reasoning below. The same factors to be considered when granting an adjournment are applicable under either scenario.

Rule of Procedure 7.9 states

> **7.9 Criteria for granting an adjournment**
>
> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:
> - the oral or written submissions of the parties;
> - the likelihood of the adjournment resulting in a resolution;
> - the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
> - whether the adjournment is required to provide a fair opportunity for a party to be heard; and
> - the possible prejudice to each party

Both parties were given the opportunity to make submissions on the issue of adjournment. Landlord's counsel advised that prior to the hearing, she had requested an adjournment of the tenant, who refused to consent.

Landlord's counsel argued that the adjournment was necessary, as this matter is under judicial review. She argued that it is within my power to adjourn the matter, and would be appropriate to do so, as the February Decision (or October Decision) may be overturned.

In support of this position, landlord's counsel cited *Ndachena v Nguyen*, 2017 BCSC 2605, in which the BC Supreme Court considered an application for the staying of a monetary order issued by the Residential Tenancy Branch, pending final disposition of the judicial review of that order. In *Ndachena*, the court granted the stay, and held:

> [11] In terms of the irreparable harm and balance of convenience, based on the evidence that is before me, I determine that the tenants do not have the means to pay the order that was granted by the Residential Tenancy Branch.

> [12] It is my decision to stay the execution. I consider that with the petition pending, the stay of the order is appropriate. As Mr. Lin put it, it favours the status quo.

Landlord's counsel conceded, as *Ndachena* involves an application at the BC Supreme Court to stay a final order of the RTB, and the present application involves a request for the adjournment of a hearing, pending a judicial review, that *Ndachena* is distinguishable from the present application.

Landlord's counsel did not articulate how the landlord would be prejudiced if an adjournment was not granted, nor did she address any of the factors set out at Rule 7.9.

The tenant argued that she would be prejudiced if the hearing were adjourned. She submitted that, at its core, this hearing is about protecting her rights as a tenant. She argued that the landlord is not complying with the October Decision, and that, if she is successful at this application, I would order a reduction of her rent until such time as the landlord complied with the October Decision. She argued that an adjournment of the hearing would prejudice her, as it would prolong the landlord's non-compliance with the October Decision.

In order to properly assess whether or not the tenant would be prejudiced by an adjournment, I need to determine the scope of the orders made in the October Decision (the "**October Orders**"). However, this is the same analysis I would need to undertake when evaluating the tenant's application as a whole.

As the determination of the scope of October Orders will be necessary whether or not I grant an adjournment, the determination of the scope of the October Orders is the central issue in the tenant's application, as the landlord will not be prejudiced if an adjournment is not granted, and as the landlord may ask the BC Supreme Court for a stay of execution of any order I make in this decision (per *Ndachena*), I decline to grant the adjournment sought by the landlord.

Issues to be Decided

Per the February Decision, the remaining issues are:

1) is the tenant entitled to compensation for the landlord's non-compliance with the October Orders; and
2) is the tenant entitled to a reduction of rent until such time as the landlord has complied with the October Orders?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting May 1, 2018. Monthly rent is $420 and is payable on the first of each month. The tenant paid the landlord a security deposit of $187.50 and a pet damage deposit of $187.50, which the landlord continues to hold in trust for the tenant. The rental unit is located in a larger residential property (the "**Building**").

As stated above, the parties took part in the September Proceeding, following which the presiding arbitrator issued the October Decision. In the October Decision, the arbitrator considered whether the procedures the landlord had in place regarding the tenant's and her guests' access to the residential property were in accordance with the Act.

In the October Decision the presiding arbitrator considered the issue of the tenant's access to the residential property and the landlord's guest policy. He wrote:

> 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 Landlords 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.

The parties agree that the landlord has provided the tenant with a fob to gain entry to the Building and its elevator, and that the tenant does not require the permission of a security guard to gain access to the Building. Additionally, the parties agree that the landlord does not require the tenant's guests to sign in or provide identification to anyone when they enter the Building, or that the tenant remain with her guests while they are in the building.

The parties agree that there are two sets of front doors that guests of the building must pass through in order to gain access to the Building. They agree that there is an intercom located outside the front door which is accessible from the street which anyone can enter the tenant's code into and be connected to the tenant's cell phone. The tenant's name and code are not posted on the intercom. Rather, the tenant's guests must have been given the code by the tenant.

In order for her guests to gain access to the Building, the tenant must leave the rental unit, come down to the entrance of the Building, and open the two sets of front doors to let her guests in. She is not able to “buzz” them in from the rental unit.

She testified, and the landlord did not dispute, that the intercom system installed in the Building is capable of being configured so that she can “buzz” guests in from the rental unit.

The tenant argued that the landlord is in breach of the October Orders by not configuring the intercom system to permit her to “buzz” her guests into the Building from her rental unit. Additionally, she argued that this inability is a breach of the Act.

The tenant also argued that the landlord is required to provide her with a fob to access the interior stairwells of the Building, so that she can walk up to the rental unit, and not have to take the elevator. She testified that she is a public health worker, and, due to the current COVID-19 pandemic, does not want to be in close proximity with other people.

The landlord argued that, while the presiding arbitrator discuss the intercom system in the October Decision, he did not make any order regarding changing the intercom system to allow the tenant to be able to “buzz” guests in from the rental unit, or that the lack of such a system is a breach of the Act.

The landlord argued that the October Decision is silent as to the tenant’s access to the stairway, but, in any event, it is willing to provide the tenant with such access.

The landlord argued that the changes it has made to its policies (which the tenant agreed have been made) are all that is necessary to comply with the October Orders.

Analysis

1. Is the landlord in breach of the Act?

The tenant made submissions to the effect that her inability to access the stairwells and her lack of ability to “buzz” guests into the Building from the rental unit is a breach of the Act.

With respect to the tenant, this is not relevant to the present application. As stated above, the scope of this application is restricted to whether the landlord has complied with the October Orders, and if not, what compensation the tenant is entitled to. The question of the landlord’s guest policy was the subject matter of the September Proceeding. As I stated in the February Decision, matters that were or ought to have been before the arbitrator at the September Proceeding are *res judicata*, and cannot be argued at this proceeding.

2. Scope of the October Orders

The parties agree on the following:

1) the landlord has provided the tenant with a fob to gain entry to the Building and its elevator;
2) the tenant does not require the permission of a security guard to gain access to the Building; and
3) the landlord does not require the tenant's guests to sign in or provide identification to anyone when they enter the Building; and
4) the landlord does not require the tenant to remain with her guests while they are in the Building.

In the conclusion of the October Decision, the presiding arbitrator orders the landlord to rescind the policies which are not in compliance with sections 28 and 30 of the Act and section 9 of the Residential Tenancy Regulations.

In the October Decision the presiding arbitrator wrote:

> 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.
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> [emphasis added]

As such, I understand that presiding arbitrator to have determined that the policy of the requiring a security guard to grant the tenant access to the Building to be in breach of the Act. I do not understand him to have determined that the tenant's inability to access the stairwells to be a breach of the Act. Indeed, this issue does not appear to have been addressed at all in the October Decision.

As such, I do not find that the landlord has breached the October Orders by failing to provide the tenant access to the Building's internal stairwells.

With respect to the intercom, the presiding arbitrator wrote:

> 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.

I do not understand this passage to mean that a lack of such a system is a breach of the Act. Indeed, I am not even certain that the system described is one where a tenant has the ability to "buzz" a guest into the Building from the rental unit. Rather, this passage describes an intercom system where a guest can contact a tenant and be given permission to enter the property. I am not certain if being "given permissions" means the ability to "buzz" a guest in, or if it means the tenant has the ability to exercise their discretion in allowing someone into the building (say, by not going down to the lobby to let them in). The intercom system currently in the Building satisfies this latter interpretation.

In any event, even if it did not, the presiding arbitrator explicitly set out which of the landlord's guest policies he found to be in breach of the Act:

> With respect to the Landlord's guest policy, I accept the Landlords 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.
>
> [emphasis added]

While he discussed the intercom system, he did not include it in his list of infringements of the tenant's rights under the Act. As such, I do not find that the landlord's failure to calibrate the intercom system so that the tenant may "buzz" a guest into the Building from the rental unit to be a breach of the October Orders.

3. Tenant's Compensation

As the landlord has not breached the October Orders, the tenant is not entitled to the compensation sought in her application.

Conclusion

The landlord has complied with the October Orders.

The tenant's application is dismissed, without leave to reapply.

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 6, 2020

Residential Tenancy Branch