



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Habitat Housing Society
Options Community Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, PSF, OLC

Introduction

This hearing was reconvened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing access to the unit by Tenant or Tenant’s guests - Section 70;
2. An Order for the provision of facilities and services - Section 65; and
3. An Order that the Landlord comply with the Act - Section 62.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord provided additional documents for the reconvened hearing of March 24, 2020. The Tenant asks that this evidence not be considered as it is contrary to the Interim Decision dated January 21, 2020 that does not allow further documentary or digital evidence. The Tenant provided additional documents for the reconvened hearing of May 21, 2020. The Landlord asks that this evidence not be considered as it is also contrary to the Interim Decision.

.

A review of the Landlord documents indicates that it contains evidence. As the Interim Decision does not allow consideration of further evidence and as the Landlord’s

documents provide evidence, I decline to consider the Landlord's documents provided after the Interim Decision. A review of the Tenant's submission indicates that this is not documentary or digital evidence but case law that supports legal argument. As this is not evidence, I accept the Tenant's submissions for consideration.

Issue

Is the Landlord unreasonably restricting the Tenant's guests?

Has the Landlord removed the Tenant's access to facilities or services?

Facts

The Tenant states that the Landlord has a blanket guest policy that results in the denial of the Tenant's right to have guests. The Tenant states that there is no reason to restrict the Tenant's guests. The Tenant states that only one guest was denied entry in the summer of 2019 but that the Landlord has required all guests to show government issued identification for entry. Further the Tenant must sign a document setting out the date, unit number, time of visit, including expected leave time, names of guests and type of identification provided by the guest. The Tenant states that it must also document when the guest leaves or the visit will be automatically considered to be an overnight guest which is also restricted to 14 times in one year. The Tenant states that this restrictive and blanket guest policy has resulted in the Tenant not having guests as not everyone has the required identification and no alternative identification is offered to the Tenant. The Tenant states that the 14-day restriction on overnight guests leaves the Tenant without being able to obtain overnight help in the event of illness or injury. The Tenant requests an order allowing guests both during the day and overnight without the application of the Landlord's blanket policy.

The Landlord does not dispute the blanket policy and states that the Tenant has never had any problematic guests. The Landlord states that the blanket policy must be applied to the Tenant anyway as to do otherwise would result in "cherry picking". The Landlord states that this policy is in place as there has been damage caused to the

common areas in the past and there is no way of knowing who is responsible. The Landlord states that they do have cameras in the lounge, elevator and entry area. The Landlord states that the 14-night rule for overnight guests may be extended upon written request from a tenant but if the request is unreasonable the Landlord will deny the guest. The Landlord states that this rule is applied because people have been inviting friend to live in their units. The Landlord states that this policy is also reasonable as other landlords have the same policy.

The Landlord states that although the guest policy requires the presentation of identification this is not limited to government identification and does not preclude entry if no identification is not presented. The Landlord states that the tenants have not been informed that entry is still possible without government identification. The Landlord states that they need to verify the identification of guests as this information would be required as evidence to support damage to the common areas. The Landlord states that this is necessary due to the nature of the tenants the Landlord serves and that they tend to be more “street involved” and involved with drugs, drinking and the sex trade. The Landlord states that the tenants in the building are therefore more involved with criminal minded people.

The Tenant argues that a blanket policy should not apply to the Tenant as there have never been any issues with the Tenant’s guests. The Tenant argues that this restrictive policy has had a big impact on its life. The Tenant argues that the blanket policy is unreasonable as it is contrary to the Act and regulations that provide that a landlord must not stop a tenant from having guests under reasonable circumstances. The Tenant argues that a blanket policy based on demographics or population has been denied as unreasonable in past BC Supreme Court cases. The Tenant provides copies of these and previous RTB decisions.

The Parties do not dispute that the Tenant resides in a high-rise building situated on the Landlord’s property that also includes a low-rise building (the “Other” building). The

Tenant states that the Other building contains most of the tenant services such as a food program and social gatherings or events. The Tenant states that it was provided a fob to access the Other building at the outset of the tenancy in April 2017 and was not removed when the Landlord took over the tenancy in 2019. The Tenant states that in October 2019 and without warning its fob was deactivated by the Landlord. The Tenant states that as a result it has been denied access to the common areas and services in the Other building. The Tenant states that this deactivation occurred on the same day that a guard accused the Tenant of verbally accosting him. The Tenant states that the Landlord never asked to hear of the Tenant's side of the story and that the Tenant asked the Landlord to also review the camera recording as the guard said that the incident occurred in the lobby that has cameras. The Tenant states that as a result of the deactivated fob the Tenant can no longer access programs or services provided for the tenants in the building including the food program and social gatherings.

The Landlord states that while it knows the Tenant was given a fob to access the Other building it has no records of when the Tenant was given the fob as this occurred prior to the Landlord taking over the rentals and the Landlord does not have any of the previous landlord's records. The Landlord confirms that the fob was deactivated based on the incident with the guard. The Landlord states that the Tenant took videos of the guard and posted them online and was also verbally assaulting the guard. The Landlord states that the guard's name was shared on the Tenant's social media and as a result the guard became upset and concerned for its safety. The Landlord states that the guard was moved to work in another building so that there was no conflict between the Tenant and the guard. The Landlord states that the camera in the lobby does not collect sound. The Landlord states that the Tenant did speak with the Landlord and became very upset so left. The Landlord states that it then sent the Tenant a letter. The Landlord states that the Tenant is not restricted from entering the common areas or the program areas as the Tenant only has to obtain a staff person to allow access.

The Tenant states that since the fob deactivation the Tenant attempted up to 5 times to be escorted into the low rise and that on each of these occasions the staff were either unwilling to allow the access or were unavailable.

The Landlord states that the Tenant's building contains the same services as provided in the Other building. The Landlord states that the Tenant's ability to access programs and services have not been affected by the removal of the fob. The Landlord argues that access to these programs and services are not part of the agreement with the Tenant. The Landlord states that the Tenant did not sign a tenancy agreement. The Landlord states that the Tenant only signed a program participation agreement that also contains terms of the tenancy. The Landlord states that the Tenant is required under this agreement to participate in programs. The Landlord states that it provides additional programs but that these are not mandatory for the Tenant participation. The Landlord also states that it is not required to provide programming to the Tenant and is only required to provide housing. The Landlord states however that under the program agreement the Tenant is required to participate in a program delivered by a 3rd party. The Tenant states that the program agreement states that the Tenant will participate in the housing program and will accept support services including those provided by 3rd parties.

The Landlord states that a month prior to this hearing all the tenants have had their fobs deactivated due to a policy change by the Landlord. The Landlord states that the only service that the Tenant cannot access is to a social worker that provides services only in the Other building.

The Tenant states that the kitchen and food services in its building is part of a paid program only unlike the food program in the Other building. The Tenant states that for the past year and currently the guards have not allowed access to the bathroom facilities in the Tenant's building. The Tenant states that the only other bathroom facilities are in the other building and that should an emergency occur restricting access

to the rental unit, the Tenant would not have access to any bathroom facilities. The Tenant argues that the fob allowing access to the Other building is part of the Landlord's property upon which the Tenant's building is located and that under Section 27(2) of the Act the Tenant should have access to both buildings.

The Landlord states that the Tenant's rent is subsidized based on income and that no rental reduction can be given to the Tenant for the loss of the fob access to the Other building. The Landlord states that the rent paid does not include access to programs.

Analysis

Section 30(1)(b) of the Act provides that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by the tenant. Section 28(a) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy.

There is no dispute that the Landlord has a blanket policy in place for guests, including overnight guests. There is no dispute that this policy is applied to the Tenant's right to have guests. There is no dispute that this policy requires a check-in for the presentation of personal identification and the collection of other personal data around the visit. The Landlord's evidence is that this blanket policy is based on the perceived criminality of persons who use drugs or are in the sex trade and the belief that tenants who associate with these "street people" are criminal minded however the Landlord provides no evidence to support this assertion. The Landlord's additional reasons for the blanket guest policy appears to be based on the need to collect evidence should damage occur in the building from any guests. There is no evidence that the Tenant or its guests have caused any problems or were ever a cause for concern over the length of the tenancy. If there were a concern the Landlord has rights under the Act to seek the removal of a tenant whose guests are causing any significant problems for the Landlord or other occupants. The Landlord gives evidence that despite no problems the Tenant must still be subject to the restriction as it would otherwise be "cherry picking". However, I

consider that for this Tenant the restriction is in reality a punishment for any other tenant's behavior. This is repugnant. Further given the undisputed evidence that personal information is being collected from the Tenant and its guests, I find that in the circumstances this collection of personal information is wholly contrary to the Tenant's right of reasonable privacy.

While little evidence was produced in relation to the 14-night restriction against overnight guests, the Landlord's evidence is that the rationale for the policy is to prevent tenants from bringing in additional occupants. As there is no evidence that the Tenant has brought in another occupant over the course of its tenancy, I find that the restriction is unreasonable in the circumstances.

Overall, I consider the basis for the Landlord's guest check in and overnight stays policy to be repugnant, oppressive and paternalistic. Every tenant regardless of the community they live in, their socio-economic status, their occupation, or their personal hardships have equal rights under the Act. I therefore order the Landlord to cease all scrutiny and restrictions on the Tenant's guests including overnight guests through the use of its blanket policy. Should the Landlord fail to comply with this order the Tenant has leave to reapply for compensation for any damages that may result from the Landlord's failure.

Section 27 of the Act provides as follows:

(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.

Overall, I found the Landlord's evidence and argument in relation to the programming that the Tenant is required to participate in difficult to understand and somewhat inconsistent. Nonetheless the Landlord's evidence is that the Tenant is not required to attend the programs offered in the Other building. The Tenant did not dispute this evidence. As a result, I find on a balance of probabilities that the Tenant's fob access to the Other building is not a material term of the tenancy or essential to the use of the rental unit as living accommodation. However, there is no dispute that at the outset of the tenancy the Tenant was provided a fob to access the Other building. There is no evidence that the fob was not provided to access the programs and facilities delivered in the Other building. No evidence or argument was given to support that the programs or common facilities are not services or facilities as defined under the Act. It is undisputed that the fob access was provided throughout the tenancy until an incident with a guard in October 2019. I find therefore that the Tenant was provided with access to a service or facility as part of the tenancy.

Based on the Landlord's evidence that the fob was deactivated due to an incident with a guard I find that this access to a facility was denied based on the Landlord's assessment of the Tenant's behavior. Nothing in the Act provides the Landlord with the right to remove access to a facility or service for a disturbance by a tenant. While the Tenant may have access to the same or similar programs in its own building, I consider that the removal of the fob stops the Tenant from the freedom and choice previously given to access any programs and services offered in the Other building. I also note that the evidence supports that the Tenant can only access the social worker and, in an emergency, the bathroom facilities, in the Other building. The Tenant gave evidence that since the loss of the fob the Landlord has not provided free access to the Other building as staff have either not been available or have not allowed entry. The Landlord

did not dispute the lack of available staff and I tend to accept the evidence of staff refusing entry given the evidence of the Landlord's oppressive acts in relation to guests. There is no evidence that the Landlord removed the fob access after 30 days notice in writing and no rent reduction was given for the loss of the fob access. I find therefore that the Landlord breached section 27(2) of the Act and I order the Landlord to return the Tenant's access to the Other building immediately by activating the fob or by providing the Tenant with another activated fob. Should the Landlord fail to act as ordered the Tenant has leave to reapply for compensation.

Conclusion

I Order the Landlord to cease the use of its blanket policy in relation to guests, including overnight guests on the Tenant.

I Order the Landlord to return the Tenant's access to the Other building immediately by activating the fob or by providing the Tenant with another activated fob.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: June 17, 2020

Residential Tenancy Branch