



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coast Mental Health
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 06, 2021 (the “Application”). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenant appeared at the hearing with the Advocate. S.G. and J.P. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant, S.G. and J.P. were affirmed at the outset.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the testimony and submissions of the parties as well as the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

Background and Evidence

The Tenant sought an order that the Landlord comply with the Act, regulation and/or the tenancy agreement in relation to allowing a specific guest, T.G., onto the property.

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started November 01, 2018.

The Tenant provided written submissions which state in part as follows.

On the morning of April 6th, at 9:30am, building management denied me my right to have a guest in my apartment.

My boyfriend [T.G.] and I were visiting my neighbour and three RCMP police officers, accompanied by the building manager, knocked on the door and ordered [T.G.] out of the building.

The police placed [T.G.] under arrest. They said he was a "banned guest." They removed him from the building and then released him without charges.

In this instance, the landlord has not complied with my rights to have guests under the Residential Tenancy Act, section 9...

Background

In July 2020, [T.G.] was evicted from...[the] building. We were in a relationship and lived in separate rooms. After he was evicted, staff told him he was banned.

Since then, [T.G.] has been homeless and has often stayed with me.

Sometimes night staff allows me to bring [T.G.] into my room, and sometimes they don't.

When the daytime staff and management is on duty and they find out [T.G.] is in my place, they often try to throw him out. On more than 7 or 8 occasions, staff have come to my door and told me that [T.G.] had to leave.

They ask me if I want [T.G.] in the building, if I have an unwanted guest, and if I am okay. When I say that I am okay and I want [T.G.] as my guest, they say, "Well

he's not supposed to be here, he is supposed to leave." If he does not leave at that point, they often call 911 for the police.

On 4 or 5 occasions, the police have come to my door to remove my guest at the request of staff. On two occasions they have placed him under arrest and removed him from the building and then released him without charges.

One staff person told me that management has instructed staff to call the police if they see [T.G.] in the building.

[T.G.] does not have any criminal charges related to the building or court orders to stay away from the building...

This written statement is the only documentary evidence submitted by the Tenant.

The Advocate made the following relevant submissions at the hearing.

The Tenant is seeking an order that the Landlord abide by the Act and stop interfering with their guest rights. The Landlord's actions amount to harassment and are causing the Tenant harm. By denying the Tenant the right to have T.G. as a guest, the Landlord is causing stress to the relationship as well as increased isolation and danger in relation to the Tenant. The Tenant leaves the rental unit to stay with T.G. which results in homelessness. The issues with T.G. resulted in an assault on the Tenant by police a couple weeks ago.

Section 15(b) and (c) of the tenancy agreement apply and state that the Landlord cannot restrict guests.

In the case of PHS Community Services Society v. Swait, a tenant made a similar complaint to the RTB in relation to their right to guests and violations of this right. The RTB found a violation in relation to the Landlord refusing access to guests. The court upheld this finding. The court found that the Act does not allow a landlord to bar guests from a rental building.

The Landlord does not have any additional rights to bar guests simply due to the nature of the housing.

The evidence of the Landlord does not constitute reasonable grounds of complaint against the Tenant or T.G. There have been 55 incidents when T.G. was ejected from

the building where no harm was alleged. There have been 15 calls to 9-1-1 despite the Landlord not alleging harm or that T.G. breached the quiet enjoyment of others. The police calls caused harm to T.G. who was handcuffed, detained and removed from the building without charges. The harm alleged is T.G. reacting to the actions of staff.

I asked the Advocate to make submissions about the following portion of the term relating to guests set out in the *Residential Tenancy Regulation* (the “*Regulations*”):

9 (1) The landlord must not stop the tenant from having guests **under reasonable circumstances** in the rental unit.

The Advocate provided the following answer. This is a question of reasonability. The Landlord has a right to restrict guests beyond the threshold of reasonability. The question is whether T.G. is an unreasonable guest. The issue is whether T.G. causes unreasonable harm or disruption. The Landlord has not submitted compelling evidence showing T.G. causes disruption to other tenants. The Landlord has submitted unsubstantiated logbook declarations from staff. The logbook declarations are entered at the discretion of staff and one cannot check the reliability of the statements. Most importantly, most incidents involving T.G. do not allege any harm caused by T.G. In a nine month period, there have been 55 incidents of the Landlord ordering T.G. to leave the building. Where T.G. acted unreasonably, it is a reaction to staff harassing him. This harassment causes conflict between the staff, Tenant and T.G. The Tenant's right to quiet enjoyment is being breached. The Landlord's remedy to the problem of T.G. being an unreasonable guest is to evict the Tenant. Barring of guests is not protected by the Act.

The Agents for the Landlord made the following relevant submissions.

T.G. is anything but a reasonable guest as is shown in all of the reports and recordings. The Landlord must not stop the Tenant from having guests in “reasonable circumstances”. The Landlord has to ensure the safety of all residents. Every time T.G. comes into the building he intimidates staff and others. There was one incident when T.G. “sucker punched” another person. T.G. has been observed going through other people's belongings. T.G. causes a lot of stress and anxiety to others. T.G. has been banned because he is violent. T.G. comes back to the building and continues with his violence. The documents submitted show the Tenant acknowledging that T.G. once threw feces out the window of the rental building. T.G. was evicted from the building due to physical violence. T.G. poses a concern for the safety of staff and others in the building.

The Landlord submitted a staff statement, email from a building operator, warning letters sent to the Tenant, staff notes and a Banned Guest Tracking Form. These documents outline issues with T.G. and the Tenant including the following:

- T.G. throwing human feces out the window because he thought it was funny
- On August 03, 2020, T.G. “sucker punching” a guest in the back of the head while they were at the intercom
- T.G. and the Tenant ignoring the directions of staff
- T.G. being confrontational, verbally aggressive and abusive towards staff
- T.G. being removed from the building by police for obstruction
- T.G. antagonizing staff, threatening to hurt staff and making verbal threats of violence towards staff
- T.G. swearing and yelling at staff
- T.G. previously being evicted from the building
- T.G. having a history of physical violence and verbal aggression towards staff and others in the building
- Others in the building making complaints about T.G. stealing their belongings
- Other tenants making complaints about T.G. making loud noises all night and day

I acknowledge that there is overlap between the documents submitted in relation to the incidents alleged and issues relating to T.G.

Analysis

Section 62 of the *Residential Tenancy Act* (the “Act”) states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 30 of the *Act* states:

30 (1) 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.

(emphasis added)

Term 9 of the Schedule of the *Regulations* states:

Occupants and guests

9 (1) The landlord must not stop the tenant from having guests **under reasonable circumstances** in the rental unit. (emphasis added)

(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.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

The terms set out in the Schedule of the *Regulations* are terms of every tenancy agreement (see sections 1 and 12 of the *Act*, section 13 (1.1) of the *Regulations*).

Term 15 of the tenancy agreement states:

(b) The landlord must not stop the tenant from having guests **under reasonable circumstances** in the rental unit. (emphasis added)

(c) 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 find the *Act*, *Regulations* and tenancy agreement clear that the Tenant has a right to have guests under reasonable circumstances. I find that the wording of the *Act*, *Regulations* and tenancy agreement necessarily means that the Landlord can stop the Tenant from having guests when the Tenant having those guests is unreasonable.

I understood the Advocate to submit that *PHS Community Services Society v. Swait* states, or stands for the proposition that, the Landlord cannot ban guests. I have read *PHS Community Services Society v. Swait*, 2018 BCSC 824 ("*Swait*"). I find *Swait* is about blanket policies restricting guests and not about a landlord restricting one particular guest based on that guest's behaviour. Nor do I find that *Swait* stands for the proposition that landlords cannot ban guests. I make these findings based on the following paragraphs of *Swait*:

[9] The main issue in this case concerns the guest policy, which was written on a sign posted at the Facility's reception area (the "Policy"). It stated that visiting hours were 8:30 a.m. until 10:00 p.m. It also stated no one under the age of 19 years old would be allowed in the building, and that guests had to be signed in by a resident at the front desk. In addition, guests had to present valid identification, acceptable forms of which were listed. The Policy stated information entered from guests' identification would be destroyed weekly, which necessarily implied that the information was retained by the Facility for up to a week...

[32] The arbitrator issued the Decision on the merits of the dispute on July 21, 2017. He declined to consider the petitioner's sur-reply. He found the Act did apply to the Facility. **He also concluded that the Policy contravened the Act and was unenforceable with one minor exception: the petitioner could refuse access of specified individuals under reasonable circumstances on a case-by-base basis....**

[77] The arbitrator concluded that the Policy contravened the Act. The arbitrator noted that **the applicants' submissions complained about those aspects of the Policy that, among other things, required: guests to provide personal information which staff retained; guests to sign in; guests younger than 19 were not allowed; tenants to accompany guests at all times; guests were restricted to visiting from 8:30 a.m. to 10:00 p.m.; and, overnight guests were not permitted.** The applicants submitted the Policy contravened their right to quiet enjoyment of their premises and unduly restricted access to their homes by guests. They also submitted the Policy contravened landlord obligations set out in sections 28 and 30 of the Act, and s. 9 of the Regulation....

[81] In the arbitrator's view, the petitioner did not provide any justification for prohibiting access of guests under the age of 19, nor setting maximum occupancy. **He further noted that in the absence of an assessment of any particular**

quest, the petitioner could not justify a policy requiring all quests having to be accompanied at all times.

[82] The arbitrator specifically acknowledged that the petitioner may be motivated by a concern for the health and safety of the tenants given the current opioid epidemic and overdose crisis, **but concluded that did not justify a blanket denial**. I note that the applicants' affidavit evidence indicated how the prohibition on overnight guests may in fact pose a similar danger. The arbitrator thus concluded the policy was unreasonable and impermissible, contrary to s. 9 of the Regulation as well as s. 28 and s. 30 of the Act.

[83] **The only legal issue was whether the Policy met the requirements of the Act. The Act requires that a guest policy be "reasonable"**. The petitioner submitted that Policy was reasonable because of the demographics of the particular resident population. The respondents note this approach is "misplaced" and "paternalistic". In fact, the respondents submit the protections afforded by the Act are even more important for the aforementioned resident population given their history of pre-existing disadvantage, vulnerability and homelessness...

[85] I add that the arbitrator's reasoning parallels very closely Justice McEwan's reasons in *Atira Property Management v. Richardson*, 2015 BCSC 751 where he found that **a blanket policy was inconsistent with the Act. This is precisely the reasoning of the arbitrator because he noted that it would be reasonable for the petitioner to require greater tenant control over specific quests that posed a concern; it is the blanket nature of the policy that he found unreasonable.**

[86] For all those reasons, I am satisfied that the Decision's conclusion that the Policy contravened the Act and Regulation is not patently unreasonable.

(emphasis added)

Here, I do not find that the Landlord is enforcing a blanket policy restricting all guests. I find the Landlord has banned one particular guest, T.G., based on T.G.'s behaviour. I do not find that *Swait* prohibits this.

Considering the *Act*, *Regulations*, tenancy agreement and *Swait*, I find the Landlord can stop the Tenant from having guests when the Tenant having those guests is unreasonable.

Based on the testimony, submissions and documentary evidence, I find the Landlord has banned one guest, T.G., based on T.G.'s behaviour. I do not find that the Landlord is enforcing a blanket policy restricting guests. Further, I do not find that the Landlord has banned T.G. on an arbitrary basis. I find the Landlord has banned T.G. based on his behaviour which has been thoroughly documented by staff.

Based on the documentary evidence submitted by the Landlord, I find having T.G. as a guest is not "under reasonable circumstances". I find staff have clearly documented numerous issues with T.G. in relation to staff, the building and others in the building and on the property. I find the nature of T.G.'s behaviour, as well as the number of incidents, sufficiently serious to warrant banning T.G. from the property.

The Advocate suggested that the documentary evidence submitted by the Landlord is not compelling or reliable. I do not agree. I find staff have taken detailed notes of issues they have experienced involving T.G. It has not been made clear to me why staff would lie about T.G.'s behaviour or embellish these points. Further, the only thing before me calling into question the reliability of the Landlord's documentary evidence are the submissions of the Advocate. The Tenant did not testify at the hearing. The Tenant did not call T.G. as a witness to dispute the notes of staff about his behaviour. The Tenant did not call any other witness to dispute the notes of staff about T.G.'s behaviour. The Tenant did not submit any documentary evidence that calls into question the reliability or credibility of the Landlord's documentary evidence.

The Advocate suggested that T.G.'s behaviour was justified because T.G. was reacting to staff harassing him. I do not agree. I find it reasonable that the Landlord has banned T.G. from the property given T.G.'s documented behaviour. I find staff are simply doing what they are entitled to do which is to not allow T.G. onto the property or asking T.G. to leave the property. I do not find T.G.'s negative reactions to this to be justified as it is T.G. and the Tenant who are consistently ignoring the clear direction that T.G. is not allowed on the property.

Given the above, I am not satisfied the Tenant is entitled to an order that the Landlord comply with the *Act*, *Regulations* or tenancy agreement as I do not find that the Landlord is breaching any of these. I find the Landlord is entitled to restrict guests when their presence is not under reasonable circumstances. I find T.G.'s presence on the property is not reasonable.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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

Dated: May 20, 2021

Residential Tenancy Branch