Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT LRE OLC

Introduction

The tenant applied for various relief under the *Residential Tenancy Act* ("Act").

Preliminary Issue: Service

The tenant attended the hearing, but the respondent landlord did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch's *Rules of Procedure.*

The tenant testified that he served the Notice of Dispute Resolution Proceeding on the landlord, in person, in the middle of January 2022. This oral evidence is consistent with information on the file indicating that the Residential Tenancy Branch provided the Notice of Dispute Resolution Proceeding on January 19, 2022. Given these facts, it is my finding that the landlord was appropriately served with the Notice of Dispute Resolution Proceeding necessary for her to participate fully in these proceedings.

Issue

Whether the tenant is entitled to any orders under the Act.

Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The tenancy began in November 2021 and the tenant pays rent of $750.00. The rental unit is a basement suite, and the landlord resides in the upper portion of the house.

While the tenant initially had some difficulty articulating what type of relief he sought, his application was reviewed during the hearing, and he essentially summed up the issues as follows.

The landlord has placed unreasonable terms on the tenancy agreement in respect of who and how many guests or visitors can come and see the tenant. And, whether they are permitted to stay overnight. There is no copy of a written tenancy agreement in evidence, but there is a copy of a “notice to end tenancy” before me. I put “notice to end tenancy” in quotation marks because the notice does not conform to the Act and is essentially an invalid notice to end tenancy. As are a few other handwritten notices to end the tenancy. (If the landlord intends to end the tenancy, they must do so in compliance with Part 4 of the Act.)

One of the landlord’s type-written “notices” states that “As well to not have guests between the hours of 1 am and 8 am. A couple of dates are referenced on which a guests or guest of the tenant stayed overnight.

Last, the tenant also testified that the landlord has entered the rental unit without proper notice. He seeks relief under the Act to effectively put a stop to this.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

A tenant is entitled to quiet enjoyment of a rental unit, including the right of exclusive possession of the rental unit (section 28 of the Act). This includes the right to have friends and guests over to visit, or, to sleep over. Certainly, while a landlord may attempt to end a tenancy when a tenant’s guest causes damage to the property, interferes with the landlord or other tenant, or engages in illegal activity, the landlord’s attempt to restrict the tenant from having *any* guest between the hours of 1:00 and 8:00 AM is, I find, an unconscionable term of the tenancy agreement and is therefore legally unenforceable, pursuant to section 6(3)(b) of the Act.

It is therefore ordered that the landlord may not place any restrictions in respect of hours during which the tenant may or may not have guests or visitors attend to, or visit him at, the rental unit.

A landlord may only enter a rental unit in compliance with section 29 of the Act. The tenant's undisputed evidence is that the landlord has entered the rental unit on several occasions without proper authority.

Given this, pursuant to section 70 of the Act, the landlord is hereby ordered to only enter the rental unit in strict compliance with section 29 of the Act.

Further, as I am satisfied based on the undisputed evidence that the landlord is likely to enter the rental unit other than as authorized under section 29 of the Act, I hereby order, pursuant to section 70(2) of the Act, that:

(a) the tenant is authorized to change the locks, keys or other means that allow access to the rental unit, and

(b) the landlord is prohibited from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Given the above specific orders, it is my finding that an order for landlord compliance under section 62(3) of the Act is unnecessary. This aspect of the tenant's application is dismissed with leave to reapply, if necessary.

Conclusion

For the reasons discussed above, and with the exception of the claim for relief under section 62(3) of the Act, the tenant's application is **GRANTED**.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to review grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: April 7, 2022

Residential Tenancy Branch