



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes AAT

Introduction

This conference call hearing was convened in response to the tenant's application to order the landlord to allow access to the unit for the tenant or the tenant's guests.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the landlord be ordered to allow the tenant or the tenant's guests access to the unit?

Background and Evidence

The rental unit consists of a room in a downtown east side hotel. A buzzer at the front door allows access inside the hotel where the tenants have a key to their suite. The tenant testified that over the past 9 months, he has had to wait between 5 and 10 minutes at the front door before someone at the front desk allows him inside. He stated that in the last 3 months, the mail carrier was not able to deliver mail. He said that one tenant had to wait 30 minutes a year ago, and that he is prepared to canvas other tenants who will confirm his testimony. The tenant said that these incidents occur mostly between Monday and Thursday during the day time, and submitted that the problem is connected to the staff the landlord has assigned at the front desk.

He said that he eventually has to go to the bar to get a key, or wait until another tenant leaves the building and allows him inside.

The landlord testified that he can produce evidence that the waiting times are exaggerated, and that the tenants may occasionally have to wait up to 2 minutes. He stated that the front desk is staffed 24/7, but that they may have to leave temporarily to use the washroom or other administrative duties. The landlord stated that out of 131 tenants, this problem is raised only by one tenant with whom he has ongoing tenancy problems. He stated that the retention of the front door key is critical to the safety and security of other tenants and his building.

The tenant's advocate submitted that the tenant should be allowed to canvas other tenants and to consider their evidence. The tenant already stated that other tenants would confirm his testimony. He stated that he did not notify them and could not confirm their availability for these proceedings. Therefore I do not consider that their confirmation of what the tenant already submitted as relevant in reaching my decision.

Analysis

There was no documentary evidence before me from the tenant. The tenant had the burden to prove that the landlord violated the Act, regulation or tenancy agreement. When the parties' testimonies are at odds, in the absence of other substantive independent evidence that burden of proof is not met.

Section 30 (1) of the *Residential Tenancy Act* provides in part that a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property.

In the absence of more objective evidence, such as dates and times when these incidents occurred, I am not persuaded on the balance of probabilities that the landlord violated the Act.

Conclusion

The tenant's application is dismissed.

Notwithstanding, landlords and tenants under a tenancy agreement owe a statutory obligation towards one another. The landlord has a duty of care and a right to enforce a tenancy, and the tenant is entitled to certain rights pursuant to the Act. Repeated breaches by any party do not prevent the other from making future applications for dispute resolution and to present comprehensive, relevant and timely evidence which, at that time may generate a different outcome.

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: March 23, 2011.

Residential Tenancy Branch