



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, AAT

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order allowing access to or from the unit or site for the tenant or the tenant's guests.

The tenant, an agent for the landlord and a witness for the landlord attended the conference call hearing and gave affirmed testimony. The parties were also given the opportunity to cross examine each other and the witness on the evidence and testimony. All evidence and testimony has been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order allowing access to or from the unit or site for the tenant or the tenant's guests?

Background and Evidence

The parties agree that this fixed term tenancy began on May 19, 2011 and expires on February 28, 2012. Rent in the amount of \$375.00 per month is payable in advance on the 1st day of each month, and there are no rental arrears. The landlord is a society represented by an agent who is the facility property manager, and the witness is the program manager of the apartments.

The tenant testified that in order to bring a visitor into the building, the visitor has to produce and leave identification at the front desk of the apartment building. Further, in

order to have an overnight guest, the landlord requires the tenants to provide 3 business days written notice to the landlord, and then the landlord would let the tenant know whether or not the overnight guest is approved. Further, all guests have to leave by 11:00 p.m., which is enforced by the landlord. The key fob for the building is adjusted so that the tenants cannot open the front door of the building after 11:00 p.m. until 7:00 a.m. the next morning. The tenant stated that those rules were not provided to the tenant before moving into the rental unit and the tenant did not agree to that. A copy of the tenancy agreement was provided by the tenant in advance of the hearing.

The tenant also testified that this is the tenant's home, but the rules were changed a month ago. The tenant attended a tenant meeting where 8 tenants of 96 in the building attended, and of those 8 tenants, 6 agreed to the new rules. Further, the tenant was oriented when moving into the building, but nothing about those rules was ever brought up or discussed.

When questioned about the tenant's claim for a monetary order in the amount of \$100.00, the tenant stated that the landlord is in violation of the *Act*.

The landlord's witness testified that the housing complex is a supported housing complex in partnership with other agencies to provide housing for people with physical and/or mental challenges, including drug addiction or for those that have been previously homeless. Guests are required to provide identification for safety reasons; some residents are highly vulnerable and the policy is in place so the society knows who is in the building in case police attendance is necessary. The society also has a contact person with the Vancouver Police Department who told the witness that most supported housing complexes have that policy so that police are not challenged to find people in emergency situations. The format followed is the same as other support-type residents, and is part of the safety plan. Hundreds of police calls have been made since the building opened.

The witness also testified that tenant meetings were held on September 12, and September 19, 2011, wherein the discussion of photographed identification and the overnight guest policy was discussed. Many residents wanted the photographed identification policy, and the majority agreed with the overnight policy. The overnight policy was put in place in September, 2011 and the policy requiring guests to provide photographed identification has been in place since the building opened. Overnight guests were not permitted at all when the building opened, but tenants wanted overnight guests, and the society is trying to be as flexible as possible for the tenants.

The witness also testified that this tenant has not caused any security issues, nor have any guests of the tenant.

Analysis

The *Residential Tenancy Act* does not support the rules provided or imposed by the landlord.

The landlord's agent gave submissions at the beginning of the hearing which stated that the *Residential Tenancy Act* applies, however, provided submissions at the end of the hearing indicating that this Decision could affect similar complexes of supported housing, and that the agent questions whether or not the *Residential Tenancy Act* applies.

I have read the tenancy agreement and note that paragraph 5, additional Terms states, in part:

“Any change or addition to this tenancy agreement must be agreed to in writing and initialled by both the landlord and tenant and must be reasonable. If a change is not agreed to in writing, is not initialled by the landlord and tenant or is not reasonable, it is not enforceable.”

That section also states that attached to the tenancy agreement there is an addendum consisting of 4 pages of 4 additional terms that form part of the tenancy agreement. The first deals only with criminal activity by the tenant or the tenant's guests, and does not include any of the restrictions described by the parties in their testimony. The second is a 3-page document dated September 28, 2011 entitled “Behavioural Agreement” which does not refer to any of the policies or restrictions described by the parties in this hearing.

Further, paragraph 10 of the Tenancy Agreement states:

“10. Occupants and Invited Guests:

The landlord may not stop the tenant from having guests in the residential premises under reasonable circumstances. If the number of permanent occupants is unreasonable, the landlord may discuss the issue with the tenant and may serve a Notice to End a Residential Tenancy. Disputes regarding the notice can be resolved through arbitration under the RTA.

If the tenant lives in a hotel, the landlord may impose reasonable restrictions on invited guests and reasonable extra charges for overnight accommodation of invited guests.”

Further, the tenancy agreement sets out “General Information about Residential Tenancy Agreements,” and states:

“Important Legal Document – This tenancy agreement is an important legal document. Keep it in a safe place.

Additional Terms – Any additional terms cannot contradict or change any right or duty under the RTA or this tenancy agreement. The additional terms must be reasonable. An additional term that is not reasonable is not enforceable.”

In the circumstances, I find that the parties entered into a tenancy agreement that is in compliance with the *Residential Tenancy Act*. I accept the testimony of the tenant that the parties did not agree to the restrictions about guests as evidenced by the tenancy agreement and the addendum. If the landlord intends to rent units using a tenancy agreement that contradicts the rules and policies of the supported housing program, the rules and policies are not enforceable.

I further find that the tenancy agreement entered into by the parties is evidence that the parties entered into an agreement under the *Residential Tenancy Act*, and therefore the *Residential Tenancy Act* applies.

Section 30 of the *Act* also states that a landlord must not unreasonably restrict access to residential property by the tenant or a person permitted on the residential property by that tenant. I further find that the policies and rules imposed by the landlord are unreasonable under the *Act*. Therefore, I must order the landlord to comply with the *Act* and allow access to or from the unit or site for the tenant or the tenant’s guests.

Section 31 of the *Act* states that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property, and a landlord must not change locks or other means of access to a rental unit unless the tenant agrees to the change and the landlord provides the tenant with new keys or other means of access to the rental unit. I find that changing the key fob to the front door of the building which requires the tenant to be let into the building by another person is contrary to Section 31.

With respect to the tenant’s application for a monetary order in the amount of \$100.00, I have no evidence before me to support that claim. The tenant did not advance any testimony to convince me that the tenant has suffered any loss.

Conclusion

For the reasons set out above, I hereby order the landlord to comply with Section 30 of the *Residential Tenancy Act*.

I further order the landlord to allow access to or from the unit or site for the tenant or the tenant's guests without requiring any notice to the landlord, or require any of the tenant's guests to provide identification, or require that the tenant's guests leave the building by 11:00 p.m.

I further order the landlord to comply with Section 31 of the *Act*, by allowing the tenant access after 11:00 p.m., and that the landlord must not change the locks or other means of access unless the tenant agrees to the change and the landlord provides the tenant with new keys or other means of access to the rental unit, including the front door of the building.

The tenant's application for a monetary order is hereby dismissed.

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: December 01, 2011.

Residential Tenancy Branch