



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, O, FF

### Introduction

This hearing dealt with a tenants' application for a decision as to whether the landlord may require the tenants to cease having a roommate; an Order for the landlord to install a backflow valve; and, a Monetary Order for recovery of filing fees. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. May the landlord require the tenants to cease having a roommate?
2. Is it necessary to order the landlord to install a backflow valve?
3. Are the tenants entitled to recovery of filing fees?

### Background and Evidence

The month-to-month tenancy commenced September 1, 1995. The tenants are currently required to pay rent of \$1,930.00 on the 1<sup>st</sup> day of every month. The rental unit is a single family dwelling that includes a main floor and a mostly finished basement.

The written tenancy agreement includes the following terms:

5. There will be 5 person(s) occupying the rental premises and their names are:  
[the names of the tenants and their three children are listed]
6. Except for casual guests, no other persons shall occupy the premises without written consent of the Landlord.

9. The Landlord shall at all times maintain the premises and appliances provided by himself in a condition that complies with [the] satisfaction of both parties.

13. (b) The Tenant agrees not to assign or sublet the premises without the Landlord's written permission and consent. The Landlord shall not unreasonably withhold consent.

13. (d) The Tenant is allowed the following pets: NO PETS

A document signed by both parties on September 28, 1995 also provides:

"Tenants are responsible for their own personal and property insurance, as well as their own liability coverage (fire, theft, personal injury, etc.)"

It was undisputed that shortly after the tenancy commenced the tenants erected a wall to partition off the laundry area from a living/bedroom area with the landlord's knowledge and verbal consent. It was also undisputed that the tenants have had a dog reside with them for the past 13 years with the landlord's knowledge and verbal consent.

The tenants have also made several repairs and improvements to the property during their tenancy with the landlord's knowledge, including replacing appliances and flooring, despite the tenancy agreement providing that the landlord is responsible for maintaining the property. The tenants provided copies of email communications between the parties to illustrate this point. The landlord did not deny that the tenants have made repairs to the property.

### **Tenants' position**

Approximately 15 years ago one of tenants' children moved away from the property and the tenants began renting a portion of the basement area, along with shared use of the kitchen, to a person not listed on the tenancy agreement (herein referred to as a roommate). The roommate has changed from time to time over the years; although, one person lived at the rental unit approximately eight years. The number of persons occupying the rental unit at any one time has not exceeded five.

The tenants assert that the landlord has also had knowledge and gave verbal consent for the tenants to have a roommate.

In May 2012 the landlord met with the tenant and advised the tenant that having a roommate may invalidate the owner's insurance policy so the landlord would deny

having knowledge of there being a roommate and she would tell the insurance company the person occupying the basement was the tenants' son if such an occasion arose.

After a sewage backup into the basement of the rental unit on September 21, 2012 left the basement area uninhabitable for a period time the tenants applied for and were awarded compensation for loss of use and enjoyment of the rental unit calculated as 38% of the monthly rent for the period of September 21 through December 27, 2012. The Arbitrator's decision was issued February 19, 2013.

Then on February 27, 2013 the landlord wrote the tenants a letter informing them that they had violated the tenancy agreement by renting a part of the basement to another person and that they had until April 30, 2013 to terminate that agreement.

The tenants submit that the landlord's letter of February 27, 2013 is retaliatory for the monetary award the tenants received and because the tenants are paying less than market rent for the unit.

The tenants were agreeable to compensating the landlord if having an unrelated occupant reside in the home increases the landlord's insurance premiums.

### **Landlord's position**

The landlord pointed to the tenancy agreement in support of her position that the tenants have not obtained the landlord's written consent to have an occupant reside in the rental unit that is not listed on the tenancy agreement. The landlord submitted that the tenancy agreement specifically names each of the occupants permitted to reside in the rental unit and permitted occupants are not replaceable or inter-changeable.

The landlord denied having any knowledge of the unrelated occupant living in the basement until the sewage backup occurred and the tenants communicated to the landlord that they were losing rent while the basement was uninhabitable. The landlord explained that she rarely attended the rental unit during the tenancy.

The landlord submitted that the tenants typically have done as they please and then ask for permission later, such as when they acquired a dog and then asked for permission after the fact.

The landlord submitted that the tenants' submissions concerning the conversion that took place in May 2013 are false. The landlord submitted that the purpose of the meeting with the tenant in May 2012 was to check on the condition of the rental unit and verify that the tenants had tenants' insurance.

When asked whether the landlord would be agreeable to giving the tenants permission to have an unrelated occupant reside at the rental unit if the tenants paid the increase in insurance premiums the landlord responded by indicating the landlord would likely be issuing a 2 Month Notice to End Tenancy for Landlord's Use of Property in the near future as the owner intends, at some time, to move into the rental unit. The landlord's son also indicated that the landlord wanted to have some say or control over who occupies the rental unit and that it is not just a matter of insurance premiums.

The landlord's son stated that his mother, the landlord, is only an agent for the owner and that his mother's words are often misunderstood or twisted as English is her second language.

### **Backflow valve**

The tenants request an order that the landlord install a backflow valve to prevent a future sewage back up and so that the tenants' insurance coverage may continue. The tenants indicated that they have until May 30, 2013 to show their insurance company that such has been installed.

The landlord did not have an objection to installing a backflow valve.

### **Filing fees**

The tenants are seeking recovery of the filing fee paid for this Application and the filing fee paid for the previous dispute resolution proceeding.

### **Analysis**

Considering all of the evidence presented to me, I provide the following findings and reasons with respect to each of the three issues raised by the tenants.

### ***Occupants***

Although both parties pointed to sections of the tenancy agreement and the Act that deal with assigning a tenancy agreement and/or subletting a rental unit, I find the circumstances presented to me are not indicative of assignment or subletting as the tenants continue to reside in the rental unit. Rather, I find the issue under dispute concerns the persons that may occupy the rental unit. Accordingly, the primary issues to determine are whether term 5. and 6. of the tenancy agreement are enforceable.

Section 6(3) of the Act provides for enforceability of terms in a tenancy agreement. Section 6(3) of the Act provides:

A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Upon review of term 5. and 6. of the tenancy agreement I accept that terms 5. and 6. are clearly worded, not unconscionable, and do not otherwise contradict the Act.

Section 91 of the Act provides that “except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.” Common law applicable to landlords and tenants includes the doctrine of waiver and rules of estoppel.

Waiver occurs when a party surrenders their legal right and is achieved either by express waiver or implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued a course of conduct so as to show an intention to waive his or her rights.

Closely related to waiver is estoppel which precludes a person from asserting a right. When a party is aware of the true facts and remains silent and does not take action to enforce the term or their rights, especially for a prolonged period of time, and the other party has relied upon that silence, the party becomes estopped from pursuing their right.

In light of the above, I accept that the term 5. and 6. would be enforceable provided the terms have not been waived or the landlord estopped from pursuing enforcement of the terms.

In considering whether there has been a waiver of terms 5. and 6. of the tenancy agreement I have considered the facts and circumstances surrounding occupation of the rental unit and other terms of the tenancy agreement that have been waived.

I accept the undisputed testimony of the tenants that they have had a roommate for approximately 15 years. On the balance of probabilities, I find landlord was aware of the existence of a roommate considering:

- The prolonged period of time the tenants have had a roommate;
- The tenants informed the landlord they had or wanted to have a dog, erect a wall in the basement, and make other repairs to the rental unit and these actions also contravened the tenancy agreement; and,
- The email exchange between the parties on October 28, 2012 includes communication about rental of the basement area yet there is no indication this is a new revelation or unacceptable to the landlord.

I find there is no reasonable explanation why the tenants would inform the landlord of their activities that contravened the tenancy agreement (such as having a dog, erecting a wall, making repairs) but would not divulge the fact they had a roommate.

Upon review of the various email exchanges between the parties, the tenancy agreement, the document dated September 28, 1995 and the document dated February 27, 2013 I find the landlord has demonstrated a good ability to communicate in English.

Considering the landlord had waived other terms of the tenancy agreement, such as the pet clause and the maintenance clause, I find it just as likely the landlord also waived terms 5. and 6.

Taking into consideration all of the above, I prefer the tenants' testimony over that of the landlord and I accept that they had informed the landlord that a roommate moved in after their son moved out and that the landlord has known of this for many years.

By not enforcing terms 5. and 6. for such a prolonged period of time, and the tenants having relied upon that, I find the terms 5. and 6. have been waived and the landlord is now precluded, or estopped, from trying to enforce the terms now.

In light of the above, I find the landlord's letter of February 27, 2013 to be of no force or effect upon the tenants and as a result the tenants may have a roommate.

### **Backflow valve**

I am satisfied the tenants require a backflow valve be installed in order to continue with their insurance coverage and that having tenant's insurance is a term agreed to by the parties. As the landlord did not object to the installation of such, I ORDER the landlord

to have the backflow valve installed. The landlord must comply with this order no later than May 30, 2013 and provide the tenants with documentary confirmation that this has been completed.

***Filing fee(s)***

The Act provides that an Arbitrator may order the respondent to compensate the applicant for the filing fee paid for the Application. I do not have the authority to change or alter the decision issued February 19, 2013 and make no award with respect to the filing fee paid for that Application.

As the tenants were successful in this Application, I award the filing fee paid for this Application to the tenants. The tenants are authorized to deduct \$50.00 from a future month's rent.

**Conclusion**

Terms 5. and 6. of the tenancy agreement are no longer enforceable and the tenants may continue to have a roommate. The landlord is ordered to install a backflow valve no later than May 30, 2013 and provide documentary evidence of such to the tenants. The tenants are authorized to deduct \$50.00 from a future month's rent in order to recover the filing fee paid for this Application.

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: May 02, 2013

---

Residential Tenancy Branch