



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** LRE, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant seeking an order to suspend or set conditions on the landlord's right to enter the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Should the landlord's access to the rental unit be restricted?

### **Background and Evidence**

Submitted into evidence were copies of correspondence, tenancy agreements, composed after the tenancy started, photos and written testimony.

The tenancy began on July 15, 2013 with rent of \$1,200.00. A \$600.00 security deposit was paid. No written tenancy agreement was created. However, both parties agreed that the tenancy related only to part of the home. The tenant testified that the landlord reserved use of the garage and the pool room in the lower level. The tenant's understanding was that the landlord worked out-of-town and would only be accessing this space infrequently. However, according to the tenant, the landlord was there more frequently than they were led to believe. Moreover, the landlord permitted others to use the space, which was not separated from the tenant's living area.

The tenant feels that this interferes with their family's right to privacy and exclusive possession under the Act.

The landlord testified that the tenant had originally agreed, in the verbal contract, that the tenants were only entitled to utilize the upstairs area, except for access to the lower-level laundry as needed. However, according to the landlord, the tenants “took over” other vacant rooms in the lower level, while he was away at work, and are now trying to make it impossible for the landlord to live on site between work assignments.

The landlord testified that they tried to create a written tenancy agreement, after the tenancy was in effect, in order to clarify disputed terms, but these efforts were unsuccessful because the tenant imposed drastic changes to their original verbal agreement. The landlord testified that the tenants created their own version of a new tenancy agreement and tried to withhold rent to force the landlord to agree to and sign the document giving the tenant more access than originally agreed to and reducing the landlord’s space.

The tenant testified that they had originally agreed that the landlord could store items and even stay in certain portions of the lower level, provided he first build dividing walls to ensure that people in his designated area would not be able to access the tenant’s section of the building. The tenant pointed out that the landlord had several weeks to accomplish this, but did not do so.

The utility accounts are in the tenant’s name. Both parties testified that no arrangement was made for the landlord to compensate the tenant for the proportion of the utilities used by the landlord for the storage and rooms that the landlord accessed.

### **Analysis**

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

I find that the tenancy terms that are under dispute should have been defined in detail within the tenancy agreement. This includes identifying which areas are the exclusive possession of the tenant, which areas can be accessed by the landlord, and for what purpose the space is to be utilized. The arrangement for shared utilities is also something that must be detailed in the agreement.

Section 13 of the Act requires that a landlord prepare in writing every tenancy agreement entered into and within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement. The Act also specifies that a tenancy agreement must comply with the Act and regulations and set out standard terms and other data including:

- the correct legal names of the landlord and tenant;
- the address of the rental unit;
- the date the agreement is entered into and the tenancy starts;
- the address for service and telephone number of the landlord or agent;
- the agreed terms about whether the tenancy is for a fixed term or periodic tenancy;
- the amount of rent payable and whether it rent varies with the number of occupants;
- what day in the period that the rent is due;
- which services and facilities are included in the rent; and
- the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

I find that the landlord has an obligation under section 13 of the Act to create a written tenancy agreement to be signed by both parties.

I find that the tenancy agreement between these two parties was a verbal agreement and it is apparent that each of the parties differed in their respective understanding of some of the tenancy terms that they had negotiated, right from the start. I find that the contradictory interpretations of the landlord's and the tenant's reciprocal rights and responsibilities under the verbal contract has now resulted in a conflict situation.

Section 6(3) of the Act states that 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.** (My emphasis)

I am not prepared to interpret disputed verbal terms, or add mandatory terms in compliance with the Act, which would essentially entail re-writing a compliant tenancy agreement for these two parties.

However, I find that some of the terms, including the lack of security for the tenant's section of the building and the responsibility for utility payments would fall under section 6(3)(a) of the Act. Other disputed verbal terms would fall under section 6(3)(c) of the Act.

As this tenancy is continuing, I find it necessary to order that the parties come up with a written tenancy agreement between them that clearly divides the space to ensure that there is adequate secure separation between the two areas. I find that to comply with the Act, the units need to be delineated to prevent one party from freely accessing the area inhabited by the other. I make no determination as to how this must be accomplished, as that would exceed my role and authority under the Act.

However, I find that both parties are in agreement that the landlord has exclusive use of the garage and this is not in dispute.

In regard to the other rooms which are to be used by the landlord, I find that the parties must find their own solution, provided it does not allow the landlord, or persons permitted by the landlord, to enter into or pass through the tenant's private residence at will.

This limitation is to comply with section 28 of the Act, which protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) **exclusive possession of the rental unit**, subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to inspect rental unit*]; (My emphasis)
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I order that, if it ends up that the tenant's current square footage or any facilities need to be reduced under the written agreement, then there must be a corresponding reduction in rent, in compliance with section 27 of the Act.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit. However a service or facility, other than an essential or material one, may be restricted or terminated, provided that the landlord:

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

**(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement** resulting from the termination or restriction of the service or facility. (My emphasis).

Also to be negotiated between the parties is what share or percentage of the utility costs must be paid for by the landlord.

Given the above, I find that it is the responsibility of these two parties to comply with the Act and to devise a tenancy agreement that is fully in compliance with the Act. Information is available by contacting Residential Tenancy Branch or the Residential Tenancy Act website.

I hereby dismiss the tenant's application with leave to reapply. The tenant is not entitled to reimbursement of the cost of filing the application.

### Conclusion

The tenant is partly successful in the application as the parties are *both* ordered to comply with the Act and to create a written tenancy agreement that complies with the Act

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: October 31, 2013

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Residential Tenancy Branch

