



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

a matter regarding Domus Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

AS, O, FF

### **Introduction:**

The hearing on February 25, 2016 was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for authority to assign or sublet the rental unit; for "other"; and to recover the fee for filing this Application for Dispute Resolution. At the hearing on April 18, 2016 the Tenant explained that she simply wants authority to have a roommate, a house sitter when she is away for extended periods of time, a house cleaner, and/or a friend periodically check her unit when she is away for extended periods of time.

The hearing on February 25, 2016 was adjourned for reasons outlined in my interim decision of February 25, 2016.

The hearing was reconvened on April 18, 2016 and was concluded on that date.

Legal Counsel for the Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were received in the mail on January 23, 2016.

On February 12, 2016 the Tenant submitted evidence labelled 1 to 27 to the Residential Tenancy Branch. Legal Counsel for the Tenant stated that this evidence was faxed to the Landlord on February 12, 2016. The Landlord acknowledged receipt of this evidence.

Residential Tenancy Branch Rules of Procedure 3.14 stipulates that all evidence at must be received by the respondent and the Residential Tenancy Branch at least 14 days before the hearing. Although the Landlord did not receive the documents that were faxed on February 12, 2016 until 13 days before the hearing, I find it reasonable to accept the documents as evidence for these proceedings. As the hearing on February

12, 2016 was adjourned until April 18, 2016, I find that the Landlord has had ample time to consider the evidence and is not unreasonably prejudiced by the acceptance of the "late" evidence.

On February 11, 2016 the Landlord submitted evidence labelled 1 to 26 to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was faxed to the Tenant on February 11, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Legal Counsel for the Tenant stated that on the morning of April 18, 2016 he submitted a written submission and case law to the Residential Tenancy Branch. This evidence was not before me at the hearing on April 18, 2015. As this evidence was not served in accordance with timelines established by rule 3.14 of the Residential Tenancy Branch Rules of Procedure, it was not accepted as evidence.

In determining that the evidence submitted on April 18, 2016 should not be accepted as evidence for these proceedings I was heavily influenced by the fact the Tenant has had ample time to make written submissions and my conclusion that adjourning the hearing for a second time to allow me to locate these documents would be unfair to the Landlord, as the Landlord would then be required to attend a third hearing.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions. Neither party called a witness.

#### Preliminary Matter #1

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that claims are limited to what is stated in the application.

In this Application for Dispute Resolution the Tenant applied for authority to assign or sublet the rental unit. In the Details of Dispute section of the Application for Dispute Resolution the Tenant made it sufficiently clear that this dispute relates to issues with friends, cleaners, house sitters, and guests being having access to the rental unit. As these matters were sufficiently explained on the Application for Dispute Resolution, those issues were considered at these proceedings.

#### Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure stipulates that claims made in the application must be related to each other and that Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The Tenant was not permitted to provide evidence regarding a breach of her right to the quiet enjoyment of the rental unit, in part, because that issue is not sufficiently related to the application for authority to sublet or assign the tenancy.

The Tenant was not permitted to provide evidence regarding her submission that her right to the quiet enjoyment of the rental unit has been breached, in part, because the Tenant has not sought a remedy to that breach. Typically a party seeks a monetary Order in compensation for a breach of the right to quiet enjoyment. In the absence of an application for a monetary Order I find that it would be fruitless for me to determine whether the Tenant's right to quiet enjoyment had been breached, as I would be unable to provide the Tenant with a remedy if I found that right had been breached.

The Tenant retains the right to file another Application for Dispute Resolution for issues not considered during these proceedings.

Issue(s) to be Decided:

Under what circumstances can the Tenant have a roommate, a house sitter, a house cleaner, and/or a friend periodically check her unit and/or stay in the rental unit? Does the Landlord have the right to end the tenancy if the Tenant allows a third party to occupy the rental unit without obtaining permission from the Landlord?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on March 01, 2004;
- the current rent is \$2,465.00; and
- they have a signed tenancy agreement..

This dispute arose, in part, because the Tenant allowed her nephew to move into the rental unit. The Tenant contends that she had informed the Building Manager that her nephew would be moving into the unit. The Building Manager contends that she was not advised the nephew was moving into the unit until a few months after he had been living there. The parties agree that they did eventually reach an agreement regarding the nephew living in the rental unit, although he is no longer living in the unit.

This dispute arose, in part, because the Tenant has rented out her unit for a period of time through "Airbnb". The parties agree that the Tenant is no longer allowing people to occupy her rental unit in this manner.

This dispute arose, in part, because the Tenant has allowed people to stay in her rental unit in a manner in which the Landlord believes contravenes the tenancy agreement. The Tenant contends the people were friends who were not paying rent and the Agent for the Landlord suspects they were paying rent, although he recognizes he is unable to corroborate that suspicion.

Section 13 of the tenancy agreement which was submitted in evidence declares, in part, that:

- no person, other than those listed in paragraph 2, may occupy the unit;
- a person who resides in the unit for longer than 2 weeks in any calendar year will be considered to be occupying the rental unit without right or permission of the landlord;
- a tenant anticipating an additional occupant must promptly apply in writing for permission to have the person approved as an occupant;
- failure to apply and obtain the necessary approval in writing is a breach of a material term of the tenancy agreement; and
- if the tenant fails to correct this breach within a reasonable time after having been given written notice to correct the breach, the landlord has the right to end the tenancy.

The Agent for the Landlord stated that the Landlord will consider all written requests for an additional occupant and will grant permission under reasonable circumstances.

Legal counsel for the Tenant argued that the Landlord is prevented from enforcing section 13 of the tenancy agreement as the Landlord was aware the Tenant had two previous occupants and the Landlord did not attempt to enforce this term at that time.

Section 19 of the tenancy agreement declares, in part, that:

- the landlord must not stop the tenant from having guests under reasonable circumstances; and
- the landlord must not impose restrictions on guests and must not accept any extra charge for daytime visits or overnight accommodation of guests.

The Landlord and the Tenant agree that on December 29, 2014 an addendum to the tenancy agreement was created, a copy of which was submitted in evidence. The Tenant argued that the addendum to the tenancy agreement is not enforceable as she only agreed to it because she believed her nephew would be required to vacate the rental unit in 24 hours if she did not sign the agreement.

The Landlord and the Tenant agree that prior to signing this tenancy agreement the Tenant had been informed that the Landlord would end the tenancy if the nephew did not vacate the rental unit.

Legal Counsel for the Tenant argued that the Landlord does not have the right to end this tenancy if the Tenant breaches section 13 of the *Act* by allowing a third party to occupy the rental unit, because the term is not a material term of the tenancy agreement.

The Agent for the Landlord stated that the Landlord considers the requirement to have permission for a third party to occupy the rental unit to be a material term of the tenancy agreement. He argued it is reasonable and responsible for the Landlord to know who is living in the residential complex.

Analysis:

Section 6(1) of the *Residential Tenancy Act (Act)* stipulates that the rights, obligations and prohibitions established under this *Act* are enforceable between a landlord and a tenant under a tenancy agreement. Section 6(3) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is inconsistent with this *Act* or the regulations, the term is unconscionable, or the term is not expressed in a manner that clearly communicates the rights and obligations under it.

On the basis of the undisputed evidence I find that term 19 of the tenancy agreement stipulates, in part, that the landlord must not stop the tenant from having guests under reasonable circumstances. I find that this term is entirely consistent with section 30(1) of the *Act*; that it is reasonable and therefore not unconscionable; and that it is clearly expressed. As the term does not breach section 6(3) of the *Act*, I find that it is an enforceable term of the tenancy agreement and that both parties must abide by the term for the duration of this tenancy.

On the basis of the undisputed evidence I find that term 19 of the tenancy agreement stipulates, in part, the landlord must not impose restrictions on guests and must not accept any extra charge for daytime visits or overnight accommodation of guests. I find that this term does not breach the *Act*; that it is reasonable and therefore not unconscionable; and that it is clearly expressed. As the term does not breach section 6(3) of the *Act*, I find that it is an enforceable term of the tenancy agreement and that both parties must abide by the term for the duration of this tenancy.

On the basis of the undisputed evidence I find that term 13 of the tenancy agreement requires the Tenant, in part, to apply to the Landlord, in writing, for permission to have a person living in the rental unit approved as an occupant.

There is nothing in the *Act* that prevents a landlord from requiring a tenant to ask permission for a person to occupy the rental unit. I therefore cannot conclude that this requirement breaches section 6(3)(a) of the *Act*.

I find it reasonable and fair for a landlord to require a tenant to inform the landlord of every occupant who will be living in the rental unit and to seek approval for that person to occupy the rental unit. I find this requirement particularly reasonable when it is expressed in the tenancy agreement prior to the start of the tenancy and I cannot conclude that it is unconscionable. I therefore cannot conclude that the term breaches section 6(3)(b) of the *Act*.

I find that the requirement to request permission for an additional occupant is clearly expressed in the tenancy agreement. I therefore cannot conclude that the term breaches section 6(3)(c) of the *Act*.

As there is insufficient evidence to establish that the requirement to request permission

for an additional occupant breaches section 6(3) of the *Act*, I find that it is an enforceable term of the tenancy agreement and that both parties must abide by the term for the duration of this tenancy.

Even if I concluded that the Landlord was estopped from enforcing the requirement to obtain permission for an additional occupant because the Landlord had previously allowed the Tenant to have an additional occupant without permission, I would find that the letters of November 27, 2014 and September 22, 2015 served to sufficiently notify the Tenant of the Landlord's intent to rely on that term of the agreement. I therefore find that the Tenant is now obligated to comply with the requirement to obtain permission for an additional occupant.

I specifically note that term 13 of the tenancy agreement does not prevent the Tenant from having a roommate, providing she requests written permission from the Landlord in advance. In the event the Landlord refuses that request and the Tenant does not deem that refusal to be reasonable, the Tenant retains the right to file an Application for Dispute Resolution to determine whether she is entitled to allow that individual to occupy the rental unit.

Section 30(1)(b) of the *Act* stipulates that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by that tenant.

On the basis of the undisputed evidence I find that term 13 of the tenancy agreement stipulates, in part, that a person who resides in the unit for longer than 2 weeks in any calendar year will be considered to be occupying the rental unit without right or permission of the landlord. I find that this particular portion of term 13 breaches section 30(1)(b) of the *Act*, as it may, in some circumstances, be unreasonable to conclude that a person who stays in the rental unit for longer than 2 weeks is an occupant.

I find it entirely possible that a person could stay in the rental unit for three weeks while they are visiting the city while maintaining a residence in another city, in which case I would find it unreasonable to consider the person an occupant. I find it entirely possible that a person could stay in the rental unit for three weeks for the purposes of minding a pet while maintaining a residence elsewhere in the city, in which case I would find it unreasonable to consider the person an occupant.

As I have concluded that the term in the tenancy agreement that declares a person who resides in the unit for longer than 2 weeks to be an occupant breaches section 30(1)(b) of the *Act*, I find it is not enforceable term of the tenancy agreement.

I specifically note that the Landlord retains the right to conclude that a person staying in the rental unit is an occupant and I find it reasonable for the Landlord to consider the length of a stay when making that determination. I simply find it reasonable to consider the circumstances of the stay before determining that the person is an occupant solely on the basis of the duration of the stay. In the event the parties disagree on whether a

person is an occupant or a guest, the parties have the right to have that matter determined through the dispute resolution process.

Duress or coercion refers to situations where a person performs an act as a result of violence, threat or other pressure against the person. Duress is pressure exerted upon a person to coerce that person to perform an act that he or she ordinarily would not perform. I find that the document dated December 29, 2014, which the parties refer to as an “addendum” to the tenancy agreement is not enforceable because it was signed under duress.

In determining that the document dated December 29, 2014 was signed under duress I was heavily influenced by the undisputed evidence that the Landlord had expressed its intent to end the tenancy if the Tenant’s nephew did not vacate the rental unit and that the Landlord indicated it would permit the nephew to reside in the unit if the “addendum” was signed. I specifically note that the “addendum” declares that “in exchange for the agreeing to the above terms, which will be added as an addendum to both tenancy agreements”, the landlord will permit R’s nephew to reside in unit”. I find that the Tenant was unduly pressured into signing the “addendum” as she had reasonable concerns that her nephew would not be allowed to continue to live in her rental unit, which was a significant concern for her.

As the “addendum” was signed under duress, I find that any new terms to the tenancy agreement that were created by the “addendum” were not enforceable. I find, however, that the “addendum” provided the Tenant with additional notice that the Landlord intends to rely on the terms of the agreement regarding guests and occupants.

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if a tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The Tenant is seeking a determination on whether the obligation to obtain permission from the Landlord to have an additional occupant is a material term of the tenancy agreement and, as such, whether the Landlord would have grounds to end the tenancy if the Tenant breached this term.

A material term of a tenancy agreement is a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. When determining the materiality of a term I must focus on the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach; I must consider what the parties discussed regarding the term when they entered into the tenancy agreement; and I must consider the true intention of the parties.

I find that the term of the tenancy agreement that requires the Tenant to obtain permission from the Landlord before allowing an occupant to move into the rental unit is a material term of the tenancy agreement.

In determining that obtaining permission for an additional occupant is a material term of the tenancy agreement I was influenced, to some degree, by the fact the tenancy agreement specifies that failure to apply and obtain the necessary approval is a breach of a material term of the tenancy agreement and that if the tenant fails to correct this breach within a reasonable time after having been given written notice to correct the breach, the landlord has the right to end the tenancy. Although the declaration is not decisive, in and of itself, it clearly notifies the Tenant that the Landlord considers the matter to be significant.

In determining that obtaining permission for an additional occupant is a material term of the tenancy agreement I was influenced, in part, by the letter submitted in evidence by the Landlord, dated November 27, 2014. In this letter the Landlord clearly informs the Tenant that it considered the matter to be a material term of the tenancy agreement and the Landlord informs the Tenant that they will attempt to end the tenancy if the Tenant's nephew continues to occupy the rental unit after November 28, 2014. I find that this letter serves to notify the Tenant of the importance of this term.

In determining that obtaining permission for an additional occupant is a material term of the tenancy agreement I was influenced, in part, by the letter submitted in evidence by both parties, dated September 22, 2015. In this letter the Landlord reminds the Tenant of term 13 of the tenancy agreement. I find that this letter serves to notify the Tenant of the importance of this term.

In determining that obtaining permission for an additional occupant is a material term of the tenancy agreement I was influenced, in part, by the Landlord's submission that it is reasonable and responsible for the Landlord to know who is living in the residential complex. I concur with this submission as it would be illogical for the Landlord to not have the right to prevent an undesirable person to live in the complex. I find that in the context of this tenancy, the term is very important.

In determining that obtaining permission for an additional occupant is a material term of the tenancy agreement I was influenced, in part, by the fact the term simply requires the Tenant to obtain approval and there is no evidence that the Landlord has ever unreasonably denied a request. I therefore find that the true intention of the term is for the Landlord to have reasonable control over the people who occupy the rental unit.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee paid to file this Application.



Conclusion:

This decision clarifies some of the terms of the tenancy agreement, although no specific Orders have been issued.

Pursuant to section 72(2)(a) of the *Act*, I authorize the Tenant to reduce one monthly rent payment by \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

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: April 24, 2016

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Residential Tenancy Branch