



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mason Investments Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to be allowed to add a tenant to his tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and an agent for the landlord.

I note the tenant had originally filed his Application for Dispute Resolution naming the on-site manager as the respondent. The on-site manager submitted a letter stating he was not the landlord. The tenant submitted an explanation on his Application for Dispute Resolution form and asked to have the respondent's name changed to the corporate landlord name and a copy of a letter to the landlord from the tenant advising him of this change and asking someone from headquarters to attend the hearing.

At the hearing the landlord's agent confirmed that she had received the tenant's Application and was prepared to represent the landlord. She also confirmed that the on-site manager was away on vacation and was not available for this hearing. I note also the landlord did not provide any written submissions from the on-site manager.

I accept the tenant's amendment and have excluded the name of the on-site manager to this decision and added the corporate landlord as the respondent.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to be allowed to have an additional occupant added to his tenancy, pursuant to Section 62 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties submitted into evidence a copy of a tenancy agreement signed by the parties on November 26, 2012 for a fixed term tenancy that began on December 1, 2012. The agreement stipulates that the fixed term would end on November 30, 2012 and the tenancy would convert to a month to month tenancy. The agreement stipulates

that rent is due on the 1<sup>st</sup> of each month with a security deposit of \$550.00 paid. The parties agreed the monthly rent is currently \$1,195.00.

There are two specific clauses of the tenancy agreement that are relevant to this Application and they read as follows (in their entirety):

Clause 9 states: "Additional Occupants. When a person who is not listed in paragraph 2 above resides in the premises for a period in excess of two weeks in any calendar year they shall be considered occupying the premises contrary to this Agreement without the right or permission of the landlord. This person shall be considered as a trespasser. Where the tenant anticipates an additional person in the rental premises, they shall promptly apply in writing for permission from the landlord for such a person to become a permanent occupant. Failure to apply and obtain the necessary approval of the landlord in writing is considered a fundamental breach of this Agreement. The landlord may at his option give immediate notice to end the Agreement or may at his option give notice to the tenant to immediately correct the breach. The landlord has the right to end the tenancy, if the tenant fails to correct the said breach within a reasonable time after having been given written notice by the landlord."

Clause 20 states: "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 may be resolved through arbitration under the *Residential Tenancy Act*."

The parties agreed that the tenant submitted that he had applied in May 2016 to have his partner at the time added to his tenancy as a tenant. The landlord provided testimony that the party named in the tenant's application did not pass a credit check and the tenant was not allowed to add him to the tenancy.

The landlord also noted that the person named as the tenant's partner told them he was not the tenant's partner but that he just wanted to move in to be a roommate. The landlord stated that their policy is to not allow roommates in 1 bedroom and studio units in the residential property. They do allow tenancies with two adults living in a 1 bedroom unit when the adults are in a relationship (i.e. partners or spouses).

The tenant stated that since that time he has approached the on-site manager asking to be able to apply to have his new partner added to the tenancy agreement. He stated, but provided no evidence to this hearing, that his new partner is financially stable and should have no problem passing the landlord's credit check.

The tenant submitted that the onsite manager refused to allow the tenant to even submit an application at all. The agent at the hearing stated they have not received an application from the tenant to add another tenant to the agreement since May 2016 but

could not comment on any interactions between the tenant and the on-site manager regarding a second application.

The landlord explained that they believe that having two adults who are not in a relationship is an unreasonable number of people in the unit. They want to prevent roommates from dividing up the unit by putting a curtain in the middle of the living area or other methods to secure a second sleeping area.

The landlord submitted that this is also a requirement under local fire regulations. The landlord did not provide a copy of any local bylaws that prevent two adults from living in a 1 bedroom unit due to fire safety. The landlord could also not explain why it would not be against fire regulations if a single person had an adult guest staying with him when a fire occurred or how it would be acceptable to fire regulations if the two adults were in a spousal relationship.

The landlord stated that in addition when another adult moves into a rental unit where utilities are included in the rent the costs will increase for the landlord. The landlord submitted that in such cases they would charge more rent for a new occupant. The landlord could not point out any clause in the tenancy agreement that states that the rent would increase in the event of an additional occupant moving into the unit.

The landlord testified that when a single person held a tenancy and they got married and the spouse wanted to move into the rental unit they would make the parties sign a new tenancy agreement with the new rent amount. The landlord was not sure what they would do if the tenant did not agree to sign a new tenancy agreement.

I note an additional document that appears to be a “welcome letter” to the tenant was submitted into evidence. Under the title of Occupancy the letter states: “Only the tenants listed in the Tenancy Agreement are permitted to live in the premises. Should your circumstances change and you wish to bring in a new/additional tenant, permission must be given in advance and in writing by the Management.”

### Analysis

I accept that the tenancy agreement and all information available to the tenant require that the tenant must obtain written permission from the landlord if he intends to have another tenant move into the rental unit. I note the tenant does not raise any issues with the fact that he must obtain this approval.

I also accept that the landlord retains the right to approve a prospective tenant, whether they are newly applying on their own or they are applying to join an existing tenancy based on reasonable and specific criteria.

However, I find that the landlord must apply the same criteria to **all** potential tenants.

In addition, I find the landlord has determined that 2 adults living in a 1 bedroom rental unit, such as the subject rental unit, is an unreasonable number of occupants if the 2 adults are not in a spousal relationship yet. Clause 20 of the tenancy agreement, as well as Section 47 of the *Act*, allows a landlord to end a tenancy if there are an unreasonable number of occupants in the rental unit.

I am not persuaded by the arguments put forward by the landlord that their policy is reasonable and enforceable for the following reasons:

- I find the landlord has failed to provide any evidence to confirm that having two adults in a rental unit on a permanent basis is contrary to fire regulations if the two occupants are not in a spousal relationship or what exemptions exist in those regulations for temporary guests or spouses;
- I also find the landlord has failed to provide any evidence that they charge additional rent to spousal couples or a single person who wants to add a spouse to their tenancy. Section 13(2)(f)(iv) of the *Act* requires a landlord to set out the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
- Regardless of this finding, I also find that the requirement to pay additional rent to cover additional utility costs incurred by the landlord when there are 2 tenants is a reasonable consideration. However, the same requirement can be applied to tenancies where the 2 tenants in a 1 bedroom unit are not in a spousal relationship; and
- I am not satisfied that the landlord has established that two roommates would be more inclined to cause any damage to the rental unit such as putting up a curtain in the living area to separate the room than a spousal couple. In addition, all tenants are required to either restore any damage to the property or be held responsible for the costs for damage to the rental unit that is more than reasonable wear and tear, pursuant to Section 37 of the *Act*. Furthermore, a landlord may end a tenancy if the tenant causing extraordinary damage to a rental unit in accordance with Section 47 of the *Act*.

As a result, I find it is unconscionable for the landlord to require the tenant to identify that a person seeking to join his tenancy is his partner or not.

I also find that by accepting 2 person tenancies in 1 bedroom units at all, the landlord must not consider 2 adults living in this one bedroom unit tenancy to be an unreasonable number of occupants as a ground to end this tenancy. However, I caution the tenant the landlord may still maintain the ability to end the tenancy if the tenant fails to obtain the landlord's written approval.

In the absence of any written statement or the testimony from the on-site manager and in consideration of the landlord's testimony that she had no knowledge of events, I must accept the tenant's version of events that he was not allowed to even submit an application to add a new tenant to his tenancy.

### Conclusion

Based on the above, I make the following orders:

- The landlord must accept and consider any application from the tenant to add a tenant to his tenancy;
- The landlord must not deny the tenant the addition of a new tenant to his tenancy based on consideration of the relationship between the tenant and his proposed new occupant; and
- The landlord retains the authority to determine suitability of the applicant as a tenant using the same criteria used to assess any other additional tenant.

I caution the landlord that should the tenant be able to establish that the landlord has failed to assess his potential additional applicants in accordance with these orders the tenant may be entitled to compensation.

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: September 27, 2016

---

Residential Tenancy Branch