



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

On April 11, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation or the tenancy agreement?

Background and Evidence

The Landlord and Tenant both testified that the tenancy is a month to month tenancy that began on September 1, 2014. Current rent in the amount of \$988.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$475.00.

The Tenant testified that the Landlord approached her asking questions about how often she lets her boyfriend stay overnight. She submitted that the Landlord told her that her boyfriend needs to be added to the tenancy agreement. The Tenant submitted that the Landlord sent her an application to be completed by her boyfriend.

The Tenant provided a copy of an addendum for the parties to sign agreement that indicates the guest will adhere to all existing terms and conditions and increasing the rent to \$950.00 to accommodate the increased load on the residence.

The Tenant declined the application. The Tenant submitted that the Landlord is trying to restrict her right to have guests and is forcing her to have her boyfriend be added to the tenancy agreement, which effectively forces him to move in. The Tenant feels threatened by the actions of the Landlord and she is worried about her tenancy.

The Tenant sent the Landlord a letter in February 2018, setting out the provisions of the tenancy regulation regarding guests and restriction of guests. The Tenant submitted that her boyfriend does not live in the unit; however, he often visits. She submitted that her boyfriend has his own residence and that she has gone to stay with him for periods during the summer.

The Tenant provided a copy of an insurance document in her boyfriend's name in support of her testimony that he has his own residence.

The Tenant testified that in May 2018, the Landlord sent her an addendum to the tenancy agreement. The Tenant testified that the addendum was not agreed to by both parties at the start of the tenancy and the Landlord did not receive her agreement for any new terms and conditions of the tenancy.

The original tenancy agreement between the parties contains a term regarding occupants and guests. The agreement provides:

1. *The Landlord must not stop the Tenant from having guests under reasonable circumstances in the rental unit.*
2. *The Landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.*
3. *If the number of occupants in the rental unit is unreasonable, the Landlord may discuss the issue with the Tenant and may serve notice to end a tenancy.*

The original tenancy agreement does not contain a term that specifies that the rent will vary with the number of occupants.

In response to the Tenant's testimony, the Landlord testified that while renovating a unit on the rental property he received a complaint about use of the parking spots. He testified that the Tenant's guest was parking his car at the property just about every night.

The Landlord concluded that the Tenant's guest was more than a guest. The Landlord approached the Tenant and discussed the matter. The Landlord submitted that the Tenant acknowledged that her boyfriend often stays over.

The Landlord submitted that they wanted to know who is living on the property and increase the rent. The Landlord submitted that it is not an issue about rent money and he has no problem with the Tenant having a guest. The Landlord submitted that the issue is more about safety and security of the occupants and rental property.

The parties testified that the rental unit is a three bedroom unit occupied by the Tenant and her three children.

Analysis

Section 13 of the Act requires that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004, and a tenancy agreement must comply with any requirements prescribed in the regulations and must 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.

Section 14 of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the Landlord and Tenant agree to the amendment.

Section 47 of the Act provides that a Landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

A Tenant who permits a guest onto a rental property is responsible for the activity and actions of the guest. While I understand the Landlord's concern for the safety and security of the rental property, the Landlord does not have the authority to compel the Tenant to add her guest to the tenancy agreement. I find that it is sufficient that the Landlord is aware that the person on the property is a guest of the Tenant, and the Tenant and guest are under no further obligation to provide personal details to the Landlord.

I find that any tenancy agreement addendums that were sent to the Tenant that were not agreed to by the Tenant are not enforceable.

I find the original tenancy agreement does not contain a term that specifies how the rent will vary depending upon the number of occupants. Since there is no term that specifies a variance in rent for an additional occupant, any variance in rent needs to be agreed upon by both parties. Other than a rent increase permitted by the Act, the Landlord cannot unilaterally determine and apply an additional rent increase.

I find that there is insufficient evidence to establish that the Tenant's guest is living in the rental unit full time. I find that it is reasonable for the Tenant to have her guest over. The Tenant's guest is her boyfriend who maintains a separate residence and the couple often spend time together.

I have considered whether or not there are an unreasonable number of occupants in the rental unit. The rental unit is a three bedroom unit and I find that four or five people in the unit is not an unreasonable number of occupants. I am mindful that the Landlord did not object to the number of occupants living in the unit.

Based on my findings above, I order the Landlord to comply with section 9 of Residential Tenancy Regulation and the tenancy agreement between the parties that permits the Tenant to have guests without restrictions under reasonable circumstances.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one future rent payment.

Conclusion

I order the Landlord to comply with section 9 of Residential Tenancy Regulation and the tenancy agreement between the parties that permits the Tenant to have guests without restrictions under reasonable circumstances.

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: June 12, 2018

Residential Tenancy Branch