



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- An order for the Landlord to comply with the Act, regulation or tenancy agreement; and
- Recovery of their filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the occupant D.W., two witnesses for the Tenant (H.W. and B.W.), the Landlord, and an agent for the Landlord (the “Agent”), all of whom provided affirmed testimony. The Landlord acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application. At the request of the Landlord, a copy of the decision will be mailed to them at the mailing address in the Application and a copy will be emailed to the Agent at the email address provided in the hearing.

### Preliminary Matters

### Evidence

In the hearing the Landlord acknowledged receipt and agreed to the acceptance of all the Tenant’s documentary evidence except a copy of a notice to end tenancy, which was received late. As the Landlord submitted a copy of the notice to end tenancy with

their evidence, both parties agreed they have copies of the notice to end tenancy, and the notice to end tenancy is not in dispute, I therefore accepted all the Tenant's evidence for consideration in this matter, including the notice to end tenancy, as the acceptance of it presented no prejudice to either party.

The Landlord acknowledged that their documentary evidence was not served on the Tenant. However, as the Tenant agreed that they had copies of the tenancy agreement and a breach letter dated January 29, 2020, as well as the notice to end tenancy, I accepted these documents for consideration. The remainder of the Landlord's documentary evidence was excluded.

### Settlement

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

### Issue(s) to be Decided

Is the Tenant entitled to an Order for the Landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement dated March 3, 1998, states that the tenancy is month to month, that rent in the amount of \$1,550.00 is due on the first day of each month, that no pets are allowed, that a security deposit in the amount of \$775.00 is to be paid, that the tenants require written approval from the Landlord to make alterations to the rental unit, that the tenants are to keep the property up according to normal standards, and that the tenants must give one months notice to end the tenancy. The tenancy agreement also lists only the Tenant and H.W. as tenants and occupants.

The parties agree that the rental unit is a fully detached home with 3 bedrooms and one bathroom upstairs and 3 bedrooms and one bathroom downstairs. They agree that there is a locked door adjoining the upper and lower portions of the home and that there

is a yard and laundry room. However, the parties disputed whether the portions of the home are separate suites and whether the Tenant is entitled to have additional occupants, roommates, or tenants residing in any portion of the home. The parties also agreed that a One Month Notice to End Tenancy for Cause (the "One Month Notice") has been served on the Tenant because the Landlord states that their insurance policy prohibits the renting out of rooms. As a result, the Tenant sought an order from the Branch stating that their tenancy agreement allows, or does not prohibit them, from having additional occupants, roommates or tenants in the rental unit.

The Tenant and the witness H.W., who no longer resides in the rental unit but is the former tenant H.W. listed on the tenancy agreement, stated that they have always been authorised to have other occupants in the home and that they have in fact always rented out portions of the home. They also stated that prior to this tenancy agreement, they rented only a portion of the home from another tenant of the Landlord, who resided in the basement, and that the Landlord permitted the previous tenant to rent out portions of the home.

The Landlord acknowledged that a previous tenant had permission to rent out portions of the home but stated that the same agreement was not made with the Tenant or H.W. The Landlord stated that they rented the entire property to the Tenant and H.W. at a reduced rate as the Tenant and H.W. told them that they required the entire property to home school their children and to tutor.

The Landlord stated that only the tenants listed in the tenancy agreement were permitted to occupy the property and that they got suspicious that the Tenant was renting out the basement at Christmas when they attended the rental unit to drop off a present and it was clear that there were people downstairs, but no one answered the door. The Landlord stated that shortly thereafter, their insurance provider inquired about whether the Tenant was renting out any portions of the home, which would be prohibited under the Landlord's insurance policy, and the Landlord advised them of their suspicions.

The Tenant, the occupant and the witnesses stated that the Landlord is being untruthful and has always known that the Tenant rented out portions of the home as they had the Landlord's permission to do so and the Landlord inspected the home every year since the start of the tenancy in 1998. The Tenant also stated that although they have rented out the basement or rooms in the home at various times throughout their tenancy, they have never sublet the property without the Landlord's consent as they have never moved out and their tenancy agreement is for the entire home, not individual portions

thereof. In support of their testimony the Tenant provided three witness statements authored by H.W., D.W., and B.W. detailing the other occupants who resided in the property over the course of the tenancy.

The Landlord denied being untruthful and stated that although they would often see other people during inspections, they had no way to know that these were occupants rather than friends or visitors.

### Analysis

Although the Landlord stated that the tenancy agreement prohibits the Tenant from having any occupants reside in the rental unit other than those listed on the tenancy agreement, the Landlord agreed that the Tenant resided there with their children, who are not listed as occupants on the tenancy agreement. Further to this, I see no term in the tenancy agreement that makes it clear that only the Tenant and H.W. are to reside in the rental unit. As a result, I find that the tenancy agreement does not prevent the Tenant from having additional occupants, roommates or tenants in the rental unit.

Although section 34 of the *Act* states that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit, as the Tenant rents an entire single family home under their tenancy agreement and has maintained residence in at least some portion of the home at all times, I also find that the Tenant has not sublet the rental unit under the *Act*.

Although I appreciate that the Landlord's current insurance policy may restrict certain activities on the property, it is incumbent on the Landlord to carry appropriate insurance, should they wish to do so, for any tenancy in place. It is not the responsibility of the Tenant to ensure that the terms of their tenancy agreement comply with the Landlord's chosen insurance policy.

As stated above, I find that neither the tenancy agreement nor the *Act* restricts the Tenant from allowing additional occupants, roommates, or tenants in the rental unit, provided the total number of occupants remains reasonable, and I order the Landlord to comply with the terms of the tenancy agreement as written.

I also find that the Tenant has not sublet the property in contravention of section 34 of the *Act* or the tenancy agreement.

Pursuant to section 72 of the *Act*, I grant the Tenant recovery of the \$100.00 filing fee, which they are entitled to withhold from the next months rent, or to otherwise recover by way of the attached Monetary Order (but not both).

### Conclusion

I find that neither the tenancy agreement nor the *Act* restricts the Tenant from allowing additional occupants, roommates, or tenants in the rental unit, provided the total number of occupants remains reasonable, and I order the Landlord to comply with the terms of the tenancy agreement and the *Act* as written.

I also find that the Tenant has not sublet the property in contravention of section 34 of the *Act* or the tenancy agreement.

Pursuant to section 72 of the *Act*, I grant the Tenant recovery of the \$100.00 filing fee, which they are entitled to withhold from the next months rent, or to recover by way of the attached Monetary Order (but not both).

The Tenant is provided with the Monetary Order in the above terms and should the Tenant deem it necessary to serve the Monetary Order, rather than deduct the \$100.00 from rent, the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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 4, 2020

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Residential Tenancy Branch