



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for orders for the landlords to comply with the Act, regulations or tenancy agreement.

Both the landlords and the tenant appeared for the hearing. The tenant also appeared with her mother who has been living at the residential property with the tenant. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenant served the landlords with the proceeding package and materials. I also heard the landlord served the landlord's response to the tenant's mother but I confirmed that the tenant had reviewed the package that was received by her mother. Accordingly, I admitted the materials of both parties into evidence without objection.

The hearing process was explained to the parties and the parties were permitted to ask questions about the process.

In filing this Application for Dispute Resolution, the tenant and her mother were named as applicant co-tenants. For reasons provided in this decision, the tenant's mother is not a tenant but a permitted occupant. As such, the name of the tenant's mother was omitted from the style of cause but her name is reflected as an attendee at the hearing.

It should be noted that I did hear testimony from the tenant's mother. The tenant's mother command of English is limited and translation was provided by the tenant at times.

Issue(s) to be Decided

1. Is tenant's mother a co-tenant, tenant in common, occupant or guest?
2. Is it necessary to issue orders for compliance to the landlords?
3. Award of the filing fee.

Background and Evidence

In making this Application for Dispute Resolution, the tenant wrote (with names omitted by me for privacy):

[Tenant's mother] started to pay for the rent at her first day came to the house at July 2019, which is first 125 per week, and then 400 per month under mutual agreement with the landlords. However, a letter was sent by [landlords] at 2nd January 2022 to deny the truth that [Tenant's mother] is a tenant. Instead, they regard [Tenant's mother] as a guest and want to evict her from the home.

In the tenant's written submission, the tenant sets out that the landlords communicated their intention to raise the rent by a significant amount in December 2021 and after the tenant rejected that the landlords responded that her mother had to move out.

The parties attempted to raise other issues but I limited the scope of the hearing to that set out in the application (in the details of dispute and in the tenant's written submission) as summarized above. Accordingly, I proceeded to consider the standing of the tenant's mother as a tenant, or something else, and whether the landlords are within their right to demand the tenant's mother move out.

Both parties were in agreement that the landlords did not prepare a written tenancy agreement, as required under the Act. Rather, much of the parties' discussions regarding terms of tenancy were captured in text messages exchanged with each other.

I heard the tenant began a tenancy for rental of one bedroom, plus shared access to a bathroom, living room and kitchen in the lower level of a house in exchange for rent of \$550.00 per month starting in June 2019. The tenant shared the common spaces with other tenants who had separate tenancy agreements with the landlords. The landlords live upstairs and the landlords do not share a kitchen or bathroom with the tenant.

I also heard consistent statements that the tenant's mother came to stay in the lower level of the house, along with the tenant, in 2019 in exchange for the tenant paying a

total sum of \$950.00 to the landlords for the tenant's occupancy and her mother's occupancy.

In August 2020 the tenant moved to a different bedroom and continued to pay \$950.00 to the landlords for her and her mother's occupancy.

The tenant takes the position that her mother is "a tenant". I attempted to clarify with the tenant and her mother whether the tenant's mother has a co-tenancy agreement or a tenancy in common with the landlords. The tenant and her mother did not understand the difference despite my explanation of the difference.

I turned to the tenant's mother and asked her whether she has any obligation to pay rent to the landlords. The tenant's mother responded that she did not have any such obligation. The tenant also stated that she is the financial sponsor of her mother while her mother is going through the immigration process and it is the tenant who had discussions with the landlords concerning her mother living in the rental unit and the payment of rent.

Having heard consistent statements of the tenant and her mother that the mother does not have any obligation to pay rent, I informed the tenant that, under the Act, a tenant may be permitted to have an additional occupant and the tenant may be required to pay additional rent for an additional occupant. The tenant conceded that such an arrangement may be more applicable in this case.

The landlords were of the position that they considered the tenant's mother to be a "guest" or a "visitor" of the tenant even though they acknowledged they were charging the tenant \$400.00 per month when they permitted the tenant's mother to stay in the lower level of the house with the tenant, in addition to the tenant's monthly rent obligation. The landlords did not consider this payment to be rent but called it an "expense contribution" for the mother's occupancy.

The landlords submitted that the tenant did move to a different bedroom and that the rent for that bedroom was more but since the tenant remained obligated to pay only \$950.00 per month, the "expense contribution" for her mother came down.

The landlord eventually conceded that in December 2021 they did attempt to have the tenant pay more of an "expense contribution" for her mother prior to the tenant filing this Application for Dispute Resolution, in addition to locking a room located in the lower level and demanding the tenant's mother move out.

I declined to make any finding as to the breakdown of the base rent and the additional rent for the additional occupant from August 2020 onwards as that was not an issue raised in the Application for Dispute Resolution. Rather, if the parties have a dispute in the future concerning the tenant's base rent that they cannot resolve on their own, they may make another Application for Dispute Resolution.

I informed the landlords that the Act does not recognize payment of "expense contribution" for a guest, visitor or additional occupant. Rather, any amount paid by a tenant must be an amount permitted under the Act.

After reviewing relevant provisions of the Act with the parties, the parties were in agreement that, going forward:

- The tenant named in the style of cause is the tenant;
- The tenant's mother is a permitted occupant under the tenant's tenancy agreement;
- That the tenant is required to pay \$950.00 per month to the landlords for rent that includes additional rent for the additional occupant; and,
- The landlords will not seek to have the tenant's mother move out and ending of the tenancy will be accomplished by serving a Notice to End Tenancy in the approved form, or as otherwise permitted under the Act.

The tenant was informed that, as the tenant, she is responsible for the conduct of persons she permits on the property, including her mother, and that if the mother's conduct is such to warrant an eviction, it is the tenant's tenancy that will be ended. The tenant indicated she understood.

Analysis

Under section 13 of the Act, every landlord is required to prepare and provide the tenant with a written tenancy agreement. Obviously, this requirement is intended to set out the parties' respective obligations and entitlements and to avoid conflict and disputes over agreed upon terms. A tenancy agreement must also include "standard terms". The standard terms are provided under the "Schedule" in the Residential Tenancy Regulations and include terms regarding occupants and guests as well as rent increases and how to end a tenancy.

As for the tenant's original position that her mother is a tenant, I find there is insufficient evidence to support that. In order to find a tenancy relationship exists, there has to be an agreement between the parties that the tenant will be liable to pay rent and be entitled to occupancy of the rental unit. The landlords deny they entered into an agreement with the tenant's mother or that the tenant's mother has standing as a tenant. The tenant's mother also stated she does not have an obligation to pay rent to the landlords. It is fairly obvious to me that was no meeting of the minds that the tenant's mother entered into a tenancy agreement with the landlords. Therefore, I find I am unsatisfied that an agreement was reached between the parties that the tenant's mother would be either a tenant with her own agreement with the landlords or a co-tenant under a single tenancy agreement with the landlords and the tenant.

Under section 13(2)(f)(iv) of the Act, a landlord and tenant may agree when the tenancy forms, or by way of an amendment, that the "rent" will vary by a specified amount where there is an additional occupant or occupants. Section 13(2)(f)(iv) reads:

Requirements for tenancy agreements

...

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

...

(iv) 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;

In contrast, the Act prohibits a landlord from charging a tenant any money for the tenant to have a "guest" or a "visitor". This is provided for in standard term 9(2) which states:

Occupants and guests

9 (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.

In this case, the tenant is of the view she has been paying “rent” in the total amount of \$950.00 for herself and her mother and considering section 13(2)(f)(iv) and standard term 9(2) I find the tenant’s interpretation that she is paying rent in the total sum of \$950.00 to be consistent with the Act.

The Act does not recognize what the landlords coined as an “expense contribution” for the tenant’s mother and I find the collection of the “expense contribution” would either be illegal (and recoverable by the tenant) or be rent payable under section 13(2)(f)(iv).

Since both parties were agreeable to resolving this dispute by taking the position that the tenant is permitted to have her mother as an occupant and the tenant is required to pay rent in the total sum of \$950.00 when she has an additional occupant, as set out in the Background and Evidence section of this decision, I make that agreement an order of mine to be binding upon both parties and I consider this matter sufficiently resolved.

As for the base rent payable if the tenant does not have an additional occupant, I have declined to make a binding decision on that having heard the tenant moved rooms since the rent was originally set at \$550.00 and the base amount of rent payable by the tenant was not identified as an issue to determine by way of this Application for Dispute Resolution. Should the parties have a dispute concerning the tenant’s base rent for the room she moved into in August 2020, the parties may file another Application for Dispute Resolution to seek resolution.

Since the landlords are collecting rent, including an additional amount of rent for the tenant to have an additional occupant, I find the landlords have permitted the tenant to have an additional occupant as a term of tenancy and the landlords cannot unilaterally decide they want to prohibit the tenant from having an additional occupant. Rather, the landlords may only terminate the tenancy and with that both the tenant and the occupant would have to vacate the rental unit. To end a tenancy, the landlords would be required to serve the tenant with a Notice to End Tenancy in one of the approved forms and for one of the permissible reasons under the Act. Any Notice to End Tenancy issued by a landlord to a tenant is disputable by the tenant. Therefore, I order the landlords cease issuing letters or notices to the tenant to have her mother vacate the property.

With a view to avoiding further disputes, I provide the parties with further information concerning rent increases and termination of services or facilities.

To increase rent payable, it must be accomplished in a manner that complies with Part 3 of the Act. In brief, the landlords have to serve the tenant with a Notice of Rent Increases, in the approved form, with at least three months of advance notice, for an amount that does not exceed that amount permitted under the Regulations (1.5% increase in 2022) or an amount agreed to by the tenant in writing, or the landlords obtain the authorization of the Director for an additional rent increase.

As for the terminating services or facilities, a landlord cannot terminate a service or facility provided to the tenant under the tenancy agreement except where permitted under section 27 of the Act. Section 27 of the Act provides that a landlord may terminate a service or facility so long as the service or facility is not essential to the tenant's use of the rental unit as living accommodation, and the termination is accomplished by way of a notice in the approved form given at least 30 days in advance and accompanied by a rent reduction for the value of the lost service or facility.

Finally, it was evident to me that the landlords are woefully unfamiliar with the Act or its Regulations. I strongly encourage the landlords to become familiar with their rights and obligations to a tenant under the Act and govern themselves accordingly. The Act, policy guidelines, a guidebook and other resources are found on the Residential Tenancy Branch website. The landlords may also call the Branch and speak with an Information Officer for more information or seek their own independent legal advice.

In consideration of everything before me, I find the majority of this dispute is the result of the landlord's failure to comply with several provisions of the Act and its Regulations. Therefore, I order the landlords to pay the tenant for the cost of the filing fee, or \$100.00. The tenant is authorized to deduct \$100.00 from a future month's rent payment to satisfy this award.

Conclusion

It is ordered that the tenant is permitted to have her mother as an occupant and the tenant's total rent obligation when she has the additional occupant is \$950.00 per month. The landlords are ordered to cease demanding the tenant's mother vacate the premises.

The landlords are put on notice that increasing rent, terminating the tenancy, or terminating a service or facility must be accomplished in accordance with the provisions of the Act.

The landlords are ordered to repay the tenant the cost of the filing fee. The tenant is authorized to deduct \$100.00 from a subsequent month's rent payment to recover the cost of the filing fee.

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 06, 2022

Residential Tenancy Branch