



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFT, CNC, OLC, MNDCT, MNRT, LRE, PSF, LAT, AAT, AS**

### **Introduction**

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The remainder of the issues sought by the tenant in her application were dismissed at the commencement of the hearing because the parties acknowledged that the tenancy ended on April 30, 2022.

Both the tenant and the landlord attended the hearing, and the landlord was represented by her daughter/agent, JV (“landlord”). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and original set of evidence, however stated she was served with additional late evidence last night. The tenant acknowledges she served the landlord with evidence in response to the landlord’s evidence served upon her over a week ago. That same evidence was provided to the Residential Tenancy Branch’s dispute management system last night. I advised the parties that the tenant’s late evidence would not be considered in this decision as it was not exchanged in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure, at least 14 days prior to the hearing.

The tenant acknowledged being served with the landlord’s evidence package consisting of 169 pages and a video. I advised the parties that the landlord’s video evidence was not uploaded to the dispute management system for my perusal. The system notes that “flash drive to follow in mail”. The landlord testified that the flash drive was submitted to the staff working at the Service BC Center in their location, however at the time of writing this decision, there is no indication that the flash drive had been received by the Residential Tenancy Branch. Consequently, the video evidence that the landlord states is recorded on the flash drive was not viewed for this decision.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. She responded to the landlord's ad seeking a tenant. At the time, she was a single mother with a daughter under 18. The tenant states that she told the landlord that she was looking for an apartment for her daughter to rent, although she herself would not be occupying the unit as a tenant. Hereinafter, I will refer to the person who signed as tenant on the tenancy agreement as RS.

RS testified that she advised the landlord that she would not be living in the rental unit but signed on as the tenant because her daughter was not of legal age. RS testified that she told the landlord that she owns a home close by that she is selling and is looking to move "back east" eventually.

According to RS, she needed to find additional occupants to assist her daughter in paying the rent. She advertised and got 2 male university students to become roommates with her daughter. The roommates moved in on August 15<sup>th</sup> and one left in

mid-November. The landlord was aware of the two male roommates and approved of them. One of the men left in mid-November and the daughter sought another roommate who moved in on November 15<sup>th</sup>. This roommate had concerns regarding the daughter's dog, a large dog who tends to bark around strangers.

The landlord came to the unit one day and didn't recognize the new roommate who identified himself as living in the rental unit. The landlord didn't approve of this, and the new roommate left the rental unit after feeling uncomfortable. RS advertised, looking for a new roommate for her daughter but the landlord wouldn't consent to more tenants in the unit. RS was then required to make up the difference in rent without a roommate (\$850.00) to assist for a period of 5 ½ months, until the tenancy ended. RS seeks compensation for this.

RS seeks compensation for a broken flower pot. The landlord and her daughter attended the rental unit on December 17, 2021 for a monthly condition inspection and during the inspection, the flower pot was broken. According to RS, who was not present when the pot broke, her daughter was in the living room when the landlord pulled the blinds. That action caused the pot to fall to the floor and shatter. RS's daughter told RS that she saw the landlord pick up the pieces of the pot and put them in the recycling bin. RS did not call her daughter as a witness to provide testimony for this hearing.

The landlord gave the following testimony. RS's testimony today was the first time they became aware that RS was not a tenant. They were never under the impression that RS didn't live in the rental unit. The tenancy agreement was for RS to be the tenant and her daughter to live with her. The landlord points to RS's response to their ad seeking a tenant where RS states "*This would be for me and my daughter, S... I am comfortably retired...S works as a medic. Should something happen to her employment, I have the resources to pay the rent*". The landlord argues that RS never told her that they needed roommates to help pay the rent. When signing the tenancy agreement, RS said multiple times that she could afford the rent herself.

The landlord referred me to page 80 of her evidence, the "application for tenancy" filled out by RS. RS lists herself as the potential tenant, with her daughter as an occupant. The number of people to reside in the rental is filled out as 2: mother and daughter. Number of tenants to sign lease is one: RS. Number of occupants to occupy rental unit, not on lease is one: S.

In mid-August, the landlord got a text from S saying that she wanted the landlord to meet the two male university students who had already moved in. To the landlord, that

was already too many people living in the 3-bedroom rental unit plus den house since the landlord continued to believe RS and her daughter were already occupying it.

The landlord didn't refuse the two men living in the rental unit, but wouldn't allow any more, in accordance with clause 13 of the addendum to the tenancy agreement which states: *The tenant is not permitted to move in any other occupant or occupants without the landlord's consent.*

Regarding the flower pot, the landlord argues that RS was not present on December 17<sup>th</sup>. Both the landlord and her daughter (acting as the landlord's agent for this hearing) were there when the flower pot broke. RS's daughter's dog is well mannered when the daughter is around but gets out of control when the daughter is not in sight. During the inspection, the daughter went onto the deck. The landlord asked her to crate the dog so that they could conduct the inspection, but the daughter ignored them. While S was on the deck, the dog came into the kitchen at full speed, knocking over the flower pot which was on the windowsill. This was not witnessed by S, since she was outside on the deck. The landlord cleaned up the broken pieces of the pot and disposed of them.

### Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In the case before me, the burden is upon the RS prove it is more likely than not the facts support her claim.

First, dealing with the RS's claim for the flower pot. RS's testimony is based on hearsay, having not been present when the pot broke. Although she had the opportunity to do so, RS did not call her daughter as a potential witness to testify at this hearing. Conversely, the landlord and her daughter were present when the flower pot broke. They provided first-hand testimony of the events leading up to the pot breaking –

that the daughter's dog caused it to break. I find that RS has not provided sufficient evidence to satisfy me that her version of events is more likely to be accurate and I dismiss this portion of her claim without leave to reapply.

RS's second claim to recover 5 ½ months at \$850.00 is dismissed without leave to reapply for the following reasons. I find that RS misrepresented herself when entering into the tenancy agreement with the landlord. Based on the evidence before me, RS signed the landlord's application for tenancy stating she would be the tenant with a single additional occupant, her daughter. There is nothing in the material from the commencement of the tenancy that would lead the landlord to believe additional occupants would be required to assist RS or her daughter in paying rent. Clearly, in the response to the landlord's original ad seeking tenants, RS tells the landlord that she is comfortably retired and capable of paying rent should something happen to her daughter's employment.

Likewise, the tenancy agreement solely lists RS as a tenant. Nowhere does it indicate that RS would add additional occupants to the tenancy. In fact, clause 13 of the addendum strictly prohibits it without the landlord's consent.

In order to be successful, the RS must first satisfy me there has been a breach of the tenancy agreement, the *Act* or the regulations, pursuant to section 7 of the *Act*. Clause 13 gives the landlord the ability to withhold consent to have additional occupants. In other words, there is no requirement that the landlord accept additional occupants residing in the rental unit. Moreover, section 41(1)(c) allows the landlord to give the tenant a 1 Month Notice to End Tenancy for Cause if there are an unreasonable number of occupants in a rental unit. I find there has been no breach of the tenancy agreement, the *Act* or the regulations that would lead to a claim for compensation under section 7. Likewise, I find the landlord was within her right to refuse to accept additional occupants living in the rental unit. For the reasons stated above, this portion of the application is also dismissed without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

This application is dismissed without leave to reapply.

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 07, 2022