



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BURR PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the *Act* pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

TC and the agent AL attended for the landlord (“the landlord”). The tenant attended. Both parties had opportunity to provide affirmed testimony, call witnesses and submit documentary evidence.

The landlord acknowledged receipt of the tenant’s Application for Dispute Resolution and Notice of Hearing.

Preliminary Issue – Settlement

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. They did not reach settlement.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The parties submitted considerable testimony. Only the tenant submitted documentary evidence. Not all this evidence is referenced in my Decision. I refer only to key, relevant facts and findings.

The parties agreed the tenancy began on December 1, 2019 for a 2-bedroom apartment. Rent is \$1,500.00 monthly payable on the first of the month. The tenant paid a security deposit of \$750.00 at the beginning of the tenancy which the landlord holds.

A copy of the tenancy agreement was submitted which states:

13. ADDITIONAL OCCUPANTS

Only those persons listed in clauses one or two above may occupy the rental unit or residential property. a person not listed in one or two above who, without the landlord's prior written consent, resides in the rental unit or on the residential property in excess of 14 cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this agreement. If the tenant anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the

landlord's written approval is a breach of this agreement, giving the landlord the right to end the tenancy on proper notice.

The tenant submitted the following written summary of her claim:

As per the tenancy agreement, I requested permission for an additional occupant so that my partner, [RD], could move in with me, and the landlord unfairly denied that permission. I provided contact information for my partner as well as work, landlord and personal references and none of those references were contacted, nor was [RD] contacted. I live in a 950 sq ft, 2 bedroom suite with ample space for a second occupant.

The parties agreed as follows. On May 19, 2022, the tenant applied to the landlord in writing for permission under the agreement to have her partner reside in the unit. She provided information concerning the name of the proposed roommate and his employment. The request was denied in writing on May 31, 2022 without a reason being provided.

During the hearing, the landlord explained why they denied approval for the additional occupant as follows. They alleged the tenant had operated an Airbnb out of the unit and falsely denied the activity when confronted. The landlord expressed the opinion the tenant was a "liar" and to allow an additional occupant of the unit would be "opening a can of worms"; in other words, the landlord speculated the tenant would have additional occupants in violation of the agreement and the Act.

The landlord testified that neighbours had complained to the landlord about comings and goings of strangers from the tenant's unit. The landlord failed to provide any supporting documentary evidence, such as Airbnb listings or reviews to support a finding that such a business existed. Further, they failed to provide any evidence to support a finding that this alleged business was disturbing others or putting the property at risk.

The landlord also testified the tenant pays for utilities for the lower apartment in the building and is collecting an unreasonable amount for compensation for

utilities and laundry without proper accountability. As well, there would be extra water and garbage collection costs which are paid by the landlord. The landlord submitted no documents in support of these claims.

The tenant described the unit as having two bedrooms and being about 1,000 square feet. The landlord agreed with this description. The landlord did not state that two people in the unit was an unreasonable number of occupants.

The tenant denied the landlord had any valid reason to deny her the right to a roommate. She acknowledged briefly having a previous roommate. She asserted that she had received no complaints from neighbours. She denied lack of accountability around collection of money for utilities.

The tenant requested the landlord had no reasonable grounds to forbid her from having a roommate. The landlord requested her application be dismissed without leave to reapply.

Analysis

The tenant has the burden to establish her claim. The applicable section of the Act states:

Director's authority respecting dispute resolution proceedings

62 (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The parties agreed the tenant lives alone in a 2-bedroom unit. Both parties acknowledged the term in the lease requiring the tenant to apply for permission to have another occupant in the unit. The landlord has denied the request.

The tenant has brought an application to set aside the refusal of her landlord to allow her to have a roommate, namely, her partner. It is her position that the landlord may not withhold consent *unreasonably* to her request to have a roommate. The tenant seeks an Order that the landlord comply with their obligation to allow her to have a roommate.

I find that section 13 of the tenancy agreement includes the implied term that permission will not be unreasonably denied by the landlord.

I find the tenant has made best efforts to provide information to the landlord and to obtain consent. She offered information to the landlord regarding the proposed occupant's employment and financial resources which the landlord acknowledged they did not investigate. The landlord has not claimed the proposed occupant is unsuitable in any way.

The landlord claimed they have reasonable grounds for denying the tenant the right to have an occupant under the agreement. They assert the tenant has a poor track record with the landlord and an extra occupant means more costs for the landlord.

I find the allegations of the tenant's improper or unlawful conduct to be unsupported by any documentary evidence. I find the landlord's testimony in this regard to carry little weight.

I find that given the size and number of bedrooms, having two people occupy the unit is not "unreasonable" by any means. The tenant pays for her own consumption of power. The landlord complained about extra water costs and garbage fees. However, I find these are not significant enough to justify the landlord denying the tenant the right to take a roommate.

In summary, I find the landlord has not established reasonable grounds for refusing the tenant the right to have a roommate in these circumstances. I find the landlord's reasons to be unreasonable and unsupported by the evidence.

I find the tenant has presented sufficient reasons why the landlord should be directed to allow her to have the roommate and has met the burden of proof that the landlord has unreasonably withheld consent. I direct the landlord permit the tenant to have a roommate.

As the tenant has been successful in this application, I award the tenant reimbursement of the filing fee of \$00.00 which the tenant may deduct from rent on a one-time basis.

Conclusion

I find the landlord has unreasonably denied the tenant's request to have a roommate. I direct the landlord permit the tenant to have a roommate.

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: July 25, 2022

Residential Tenancy Branch