



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62.

Tenants AM (the tenant) and SL and landlord PC (the landlord) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Tenants' claims

The tenant's application states:

My in-laws are visiting us from [redacted for privacy] and are currently staying with us. My in-laws are waiting for their visitor visa extension and after hearing back from immigration they will be going back to [redacted for privacy] where they live. My

landlord wants to charge me \$100 per person for a total of \$200 per month because my in-laws are staying with us.

The tenants are seeking an order for the landlord to stop charging \$200.00 per month because there are two persons occupying the rental unit besides the tenants since April 2022 and to return the total amount received of \$1,000.00.

The landlord confirmed he is fully aware of the tenants' claims.

Section 62(3) of the Act states: "The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act."

Pursuant to section 64(3)(c) of the Act, I have amended the tenants' application to include a claim for a monetary order in the amount of \$1,000.00.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to comply with the Act, the Regulation or the tenancy agreement?
2. a monetary order?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started on April 01, 2022. Monthly rent is \$2,300.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,150.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates:

1. Tenants: AM and SL.
 2. Adult occupants: AM and SL.
 3. Minor occupants: SM
- [...]

7. Subject to clause 19, additional occupants, **the tenant agrees that for each additional tenant or occupant not named in clauses 1, 2 or 3 above, the rent will increase by \$100.00 per month.** The landlord's acceptance of any additional occupant does not otherwise change this agreement or create a new tenancy.

[...]

18. OCCUPANTS AND GUESTS. The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. While 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, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property. If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Act.

19. ADDITIONAL OCCUPANTS. Only persons listed in Clause 1, 2, or 3 may occupy the rental unit or residential property. Any other person who, without the landlord's written permission, occupies or resides in the rental unit or on the residential property for more than 14 cumulative days in a calendar year will be doing so contrary to this Agreement. The tenant must apply in writing to the landlord if the tenant wishes a person not named in Clause 1, 2, or 3 to become an occupant or co-tenant. Failure to obtain the landlord's written permission is a breach of a material term of this agreement.

(emphasis added)

The tenants affirmed that when they visited the rental unit before signing the tenancy agreement, they informed the landlord's agent that SL's parents would be their guests and the landlord's agent did not inform them there would be an extra fee.

Both parties agreed that SL's parents have been occupying the 2 bedroom and den, 915 square feet rental unit since April 01, 2022. The tenant stated that SL's parents live overseas and are visiting the tenants since October 2021. SL's parents have a visitor visa to Canada and will return to their home on September 27, 2022. The tenant testified that SL's parents are guests, not occupants.

The landlord said that SL's parents are occupants, as they have been staying in the rental unit for longer than 14 days during this calendar year.

Both parties agreed the landlord received \$200.00 per month since April 2022 because SL's parents have been occupying the rental unit. The tenant affirmed he did not authorize the landlord to collect the extra \$200.00 per month.

Both parties agreed that the landlord's agent has been inquiring SL's parents when they will leave. SL's parents do not speak English fluently.

The tenants submitted this application on April 19, 2022.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

SL's parents have been occupying the rental unit since April 01, 2022. I find that SL's status in Canada is not relevant to their definition as guests or occupants of the rental unit.

Regulation 9 states:

- (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.
- (2.1) Despite subsection (2) of this section but subject to section 27 of the Act [terminating or restricting services or facilities], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

The Act and the Regulation clearly allow the tenants to have guests in the rental unit, but do not specify who is a guest and an occupant.

Residential Tenancy Branch Policy Guideline 13 states:

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person

as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants.

(emphasis added)

Based on clauses 18 and 19 of the tenancy agreement, I find the parties agreed that persons that stay for longer than 14 cumulative days in a calendar year are considered occupants, not guests. Clause 7 authorizes the landlord to charge an extra \$100.00 per month per occupant. I find that clauses 7, 18 and 19 do not breach the Act or the Regulations, as the tenants are allowed to have guests.

I find that the landlord implicitly authorized SL's parents to occupy the rental unit by collecting \$200.00 per month since April 2022.

I find that it is not relevant that the landlord's agent did not inform the tenants about the occupant fee, as the tenancy agreement clearly establishes the occupant fee.

Considering that SL's parents have been occupying the rental unit since April 01, 2022 and will continue to do so until September 27, 2022, the landlord may charge the additional fee of \$100.00 per month, in accordance with clauses 7, 18 and 19 of the tenancy agreement.

Considering the above, I find the tenants failed to prove, on a balance of probabilities, that the landlord failed to comply with the Act, the Regulation or the tenancy agreement by charging the \$100.00 occupancy fee per extra occupant.

For the purpose of educating the landlord, I note that the landlord may be breaching section 28(b) of the Act by inquiring SL's parents when they will leave. The landlord may contact the tenants to make inquiries about the tenancy.

Conclusion

I dismiss the tenants' application 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: August 22, 2022

Residential Tenancy Branch