



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI-ARI-C, OLC, FFT

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 43 disputing a rent increase for a capital expenditure;
- an order pursuant to s. 62 that the landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

L.M. appeared as the Tenant. D.F. and M.F. appeared as the Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Preliminary Issue – Tenant’s Claims

The Notice of Dispute Resolution lists that the Tenant is disputing a rent increase for a capital expenditure, though the Tenant describes the dispute as follows:

The landlords imposed an occupancy fee - we didn't want to cause waves so we paid it - but now they are using it to get around the laws for rent increase. The original lease never stated that there would be an additional charge for

occupants. It was \$100/month starting October 1, 2020. They are trying to increase my rent by the allotted 1.5% as well as increase the occupancy fee to \$150. There were no amounts laid out nor was there timing of when increases are allowed.

At the outset of the hearing, the Tenant says that she no longer has the additional occupant and that she stopped paying the occupancy fee on December 1, 2022, such that she is not disputing the rent increase. D.F. made clear that there was never any rent increase for a capital expenditure in any event.

I would note that the Tenant appears to have improperly pled her claim as from the description provided by the Tenant herself, there does not appear to have ever been a rent increase for a capital expenditure. Based both upon the Tenant's acknowledgement that she is not disputing a rent increase and due to the incorrect pleadings filed by the Tenant, I dismiss this claim without leave to reapply.

The matter proceeded strictly on the issue of the Tenant's claim under s. 62 of the *Act*.

#### Issues to be Decided

- 1) Should the Landlords be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement?
- 2) Is the Tenant entitled to the return of her filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

I was advised by the Tenant that she moved into the rental unit in 2016 and signed the current tenancy agreement with the Landlords in July 2018 after they purchased the property. I have been provided with a copy of the tenancy agreement from 2018, as well as an addendum signed at the same time which limited the rental unit to one adult occupant.

The Tenant says that she got a roommate in February or March 2020 and that she and the Landlords signed a second addendum permitting the additional occupant provided

the Tenant agreed to pay a \$100.00 filing fee. The Landlords testified having only been informed of the roommate in the summer of 2020, with M.F. directing me to an email of September 18, 2020 from the Tenant in the Landlords' evidence.

The Landlords provide me with a copy of the second addendum signed by the parties on October 9<sup>th</sup> and 10<sup>th</sup>, 2020, the relevant details are reproduced below:

Under the terms of this Amendment to Residential Tenancy Agreement two adult occupants will be allowed for the period commencing October 1, 2020 and ending July 31, 2021, and a fee of \$100 per month will be paid by the Tenant for the additional occupant. The Landlord will provide a rebate of \$100 per month until January 31, 2021, for each month that the Tenant pays the fee of \$100 per month.

The Landlord reserves the right to review the approval for this Amendment for any extension of the Residential Tenancy Agreement beyond July 31, 2021 including the \$100 per month fee to be paid for the additional Occupant.

All other clauses and terms of the Agreement and Addendums signed remain in full force.

As mentioned above, the Tenant testified that the roommate moved out, saying this occurred sometime in November 2022. She says she stopped paying the \$100.00 occupancy fee beginning on December 1, 2022, which the Landlords confirm. The Landlords, specifically M.F., spoke to a level of uncertainty on whether the roommate moved out as alleged as the roommate had previously moved overseas during last winter as well.

The Tenant says that the Landlords attempted to renegotiate a new addendum and increase the occupancy fee to \$150.00. The Tenant provides a copy of this draft addendum, which is signed by the Landlords alone in September 2022. The Tenant seeks a determination on whether she is permitted to get an additional roommate now that her original roommate moved out and whether the Landlords may increase the occupancy fee unilaterally. The Tenant further testified that she is uncertain whether she does, in fact, intend to seek an additional roommate at this time.

The Landlords contend that they did nothing untoward with respect to their interactions with the Tenant. M.F. directs me to the clause in the second addendum that the

Landlords could review the amendment beyond July 31, 2021 to justify their attempt to renegotiate the occupancy fee. I am also directed to an email from the Tenant's lawyer to the Tenant dated July 23, 2021, a copy of which is included in both the Tenant's and the Landlords' evidence. M.F. argued that the letter from the Tenant's lawyer confirmed their position in this regard.

The Landlords spoke to a deterioration in their interactions with the Tenant beginning in the summer of 2022, with both parties speaking to issues that are beyond the scope of the application before me. The Tenant says that the Landlords' have scheduled inspections of the rental unit each month and the Landlords saying the Tenant has damaged the property.

### Analysis

The Tenant applies for an order that the Landlord comply with the *Act*.

Pursuant to s. 62(3) of the *Act*, the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the *Act*, the Regulations, and the tenancy agreement. As the applicant, the Tenant bears the onus of proving her claim on a balance of probabilities. What should be clear based on the nature of the application under s. 62(3) of the *Act* is that the Tenant must demonstrate that the Landlord breached the *Act*, Regulations, or the tenancy agreement in some way such that I would grant an order that they comply.

I reproduce the description of the claim by the Tenant as filed in her Notice of Dispute Resolution:

I don't think that the landlord can continually increase the occupancy fee as he feels. I don't think it was legal in the first place. There needed to be set terms. I also don't think it is appropriate he is inquiring as to guests. I am allowed to have people stay here as is my roommate without being questioned on it. They also questioned items belonging to my roommate in my garage.

Through the course of the hearing, it became clear that the application was brought about by the attempted renegotiation of the second amendment in the summer of 2022. I also accept that it appears likely that, at the same time, there was a deterioration in the landlord-tenant relationship due to other issues that have arisen. The specifics of these other issues are not germane to this application.

During the hearing, the Tenant made clear that she seeks, essentially, a declaration on whether she can have a roommate and whether the Landlords can increase the occupancy fee unilaterally. The problem with the claim is that the Tenant is essentially looking for a legal interpretation of the tenancy agreement and the addendum without first demonstrating a breach by the Landlords. It is a form of declaratory relief which is not permitted under the *Act*.

At no point during the hearing did the Tenant indicate that the Landlord breached the tenancy agreement, the addendum, or the *Act*. There were allusions to unreasonable disturbances due to monthly inspections and, at least based on the pleadings, unreasonable restrictions on guests. However, that was not the focus of the Tenant's submissions at the hearing, with her focus being on the occupancy fee increase and the roommate. Rule 7.4 of the Rules of Procedure requires parties to present the evidence upon which they intend to rely at the hearing. The other issues were not advanced in any serious way such that the sole issue was related to the occupancy fee and the roommate.

The parties signed a tenancy agreement in 2018 in which occupancy was limited to one adult. The Tenant signed the addendum. There is nothing in the *Act* that prohibits a landlord from limiting the number of occupants in a rental unit, indeed Policy Guideline 13 at page 4 encourages tenants to ensure a new occupant is permitted under the tenancy agreement before allowing the other person to move in. It would appear the Tenant acted in breach of the occupancy clause in the addendum in the spring and summer of 2020, though this issue was resolved after the parties negotiated the second addendum.

The parties signed the second addendum in October 2020 permitting the additional occupant and included an occupant fee of \$100.00. Again, nothing in the *Act* prevents the parties from amending the tenancy agreement to permit the additional occupant or restricting the imposition of an occupancy fee. Indeed, s. 13(2)(f)(iv) of the *Act* contemplates additional occupant costs to rent within tenancy agreements and s. 40(b) of the *Act* specifically excludes occupancy fees as a "rent increase" under the *Act*.

I will note that the second amendment lacks clarity on whether the occupant would be permitted beyond July 31, 2021, though this issue is moot since the Tenant says her roommate has moved out and she has stopped paying the occupant fee. During the hearing, the Tenant at no point indicated she was seeking another roommate based on

the second addendum and that the Landlords refused to permit it. She merely seeks to keep her options open should she choose to do so in the future.

I find that the Tenant has failed to demonstrate that the Landlords have breached the *Act*, Regulations, or the tenancy agreement in any way. Fundamentally, the Tenant's claim is purely speculative and seeks declaratory relief with respect to future conduct of the parties without demonstrating a breach based on past conduct. The *Act* does not permit the Director to provide such relief.

### Conclusion

The Tenant's claim under s. 62 of the *Act* is dismissed without leave to reapply.

The Tenant was unsuccessful in her application. I find she is not entitled to the return of her filing fee. Her claim under s. 72 of the *Act* 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: January 03, 2023

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Residential Tenancy Branch