



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, AS, RR, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenants' application submitted on September 22, 2022 pursuant to the Act is for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order for the landlord to allow an assignment or sublet when permission was unreasonably denied, pursuant to section 65; and
- an authorization to recover the filing fee for this application, under section 72.

The tenants' application submitted on November 08, 2022 pursuant to the Act is for:

- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement by ordering the landlord to move appliances, under section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants JJ and DM (the tenant) and landlord YL (the landlord) attended the hearing. The landlord was assisted by agent QH. 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 all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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 applications 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 – application for an order to allow assignment or sublet

The tenants' application for an order for the landlord to allow an assignment or sublet states:

I want to be allowed to assign or sublet and the landlord's permission has been unreasonably withheld: because our tenancy agreement says "Tenant pay 50% electric gas, water and sewer bill. Up to 4 adults and 1 child" Today we are 3 adults and one child and we are not allowed to add a new adult. Additional information: (our house has 5 bedrooms, 3 bathrooms and measures 4,964 sq. feet )

Section 34 of the Act states:

- (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

Residential Tenancy Branch Policy Guideline 19 states:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. **'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.** If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

**Example: John returns from his stay overseas and moves back into his rental unit and the subletting agreement between himself and Susan ends. Susan needs more time to find somewhere else to move to and asks John if he will rent a portion of the unit for her exclusive possession until she is able to move. John, without getting the written consent of the landlord, agrees. The landlord finds out about this arrangement and issues John a One Month Notice to End Tenancy (form RTB-33) for John's failure to obtain the landlord's written consent to sublet. At a hearing, an arbitrator determines that since John remained in the rental unit and allowed Susan to stay as an occupant/roommate, this wasn't a sublet as contemplated by the Act. The notice to end tenancy is cancelled.**

(emphasis added)

Both parties agreed they understand the tenants are seeking an order for the landlord to comply with the Act by granting an authorization for the tenants to have an additional occupant in the rental unit.

Per section 59(2)(b) of the Act, I accept the tenants' application for an order for the landlord to comply with the Act by granting an authorization for occupants, pursuant to section 62.

#### Preliminary Issue – unrelated claims

RTB Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the application for an order for the landlord to comply with the Act by granting an authorization for occupants is not

sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether the tenants are authorized to have additional occupants. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except the application for an order for the landlord to comply with the Act by granting an authorization for occupants.

#### Preliminary Issue – filing fees

I will consider the tenants' claim for an authorization to recover the filing fee for the first application. The filing fee for the second application is denied, as the tenants could have amended the first application.

#### Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to comply with the act by granting an authorization for occupants?
2. an authorization to recover the filing fee?

#### 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 tenancy started in April 2017. Monthly rent currently is \$2,649.95, due on the first day of the month. The landlord collected a security deposit (the deposit) in the amount of \$1,200.00 at the outset of the tenancy and currently holds it in trust. The tenancy agreement dated April 01, 2018 was submitted into evidence. It lists the tenants are JJ and DM and indicates:

Page 2: Additional information: tenant pays 50% electric, gas, water and sewer bills.  
Up to 4 adults and 1 child.

Page 7 (1 of the addendum):

1. Only occupants listed in the tenancy agreement shall occupy the rented premises. No other persons may stay longer than 3 consecutive days without the Landlord's written

permission. Addition fee may be incurred to offset the wear and tear and utility usage. The quantity of living persons is stated in the lease and limited. If a new person is added to the lease with the Landlord's written permission, the rent will increase by \$100 per month and the utility percentage will be increase by 5%. The utility percentage of this tenancy agreement is based on the assumption that the quantity of total living persons in other units of the house is 4. If a new person is added to the lease of other units, the utility percentage of this tenancy agreement will be decreased by 5% [...]

7. No business. The rented premises shall be used and occupied only as a private residence and no business of any kind shall be conducted from them. The Tenant shall not attach or display signs, notices or advertisements on or about any part of the premises. The Tenant agrees not to post the property address on any media (website, newspaper, social media, etc.) where can be viewed or accessed by the public. Involvement in any criminal and drug activity, will be automatic grounds for termination of this lease/rental agreement.

Both parties agreed the rental unit is a 5 bedroom, 3 bathroom house and that currently the occupants are the tenants, their under-age son and occupant TE, previously approved by the landlord.

The tenant affirmed she wants to have an authorization to have a fourth adult occupant. The tenant stated she advertised to rent one of the bedrooms online, she currently has a waitlist for possible new occupants and the occupant will pay rent to the tenant.

The tenant testified the landlord was aware that the tenants planned to rent the extra bedrooms when the tenancy started. The landlord said he did not know the tenants planned to rent the bedrooms.

The tenant affirmed the landlord approved 20 occupants since 2018. The landlord served a one month notice to end tenancy for cause in 2022 and the tenants disputed it. The RTB issued a decision on July 11, 2022 cancelling the notice to end tenancy and the landlord did not approve new occupants after this decision.

The landlord stated that he has the right to approve or not the occupants and that he realized the tenants are operating a business in the rental unit, which is not allowed by his insurance and the tenancy agreement.

The tenant testified that it is unfair that the landlord no longer approves occupants and that the tenancy agreement is contradictory.

## Analysis

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

I accept the uncontested testimony that tenants JJ and DM and occupant TE are occupying the rental unit and the landlord has not authorized a fourth occupant.

In *Rhebergen v. Creston Veterinary Clinic Ltd.*, 2014 BCCA 97 (*Rhebergen v. Creston*), the British Columbia Court of Appeal dealt with ambiguity in contracts:

[54] Generally a court must endeavour to resolve ambiguity in order to determine the mutual intention of the parties to a contract by interpreting the wording of any given clause in the context of the whole of the agreement as well as the factual matrix that gave rise to the agreement and against which it is intended to operate: *Jacobsen v. Bergman*, 2002 BCCA 102, paras. 3-6.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 (*Berry v. BC*), the British Columbia Supreme Court affirmed that ambiguity should be resolved in favour of the tenants:

I start from the accepted rules of statutory interpretation. I conclude that the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See *(Canada Attorney General) v. Abrahams*, 1983 CanLII 17 (SCC), [1983] 1 S.C.R. 2; *Henricks v. Hebert*, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:

I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain.

Based on the tenancy agreement, I find the tenants are authorized to have a total of four adults occupying the rental unit (page 2) and that other occupants beyond four adults may be authorized by the landlord (page 7, clause 1). However, the tenancy

agreement only names the two tenants and prohibits any kind of business in the rental unit (page 7, clause 7).

Given the ambiguity in the tenancy agreement, and considering *Rhebergen v. Creston* and *Berry v. BC*, I find the two tenants are authorized to have two paid occupants in the rental unit, regardless if having these paid occupants is a business or not. I note that the landlord approved 20 occupants since 2018 and decided not to approve new occupants after the RTB issued a decision cancelling a notice to end tenancy in July 2022.

Considering the above, I order the landlord to consider the tenants' request for the fourth occupant and to provide an objective and reasonable answer for the tenants' request in five business days after receiving the tenants' request in writing containing the occupant's complete name.

The landlord may not deny the tenants' request based on the claim that the tenants are operating a business.

The landlord may only increase rent by \$100.00 and the utilities if the landlord authorizes a fifth occupant, as the tenancy agreement stated that for the current rent four adults and one child can occupy the rental unit.

The tenants may seek compensation if the landlord unreasonably denies the approval of occupants.

As the tenants are successful, I authorize the tenants to recover the \$100.00 filing fee.

### Conclusion

I order the landlord to consider the tenants' request for an occupant and to provide an objective and reasonable answer for the tenants' request in five business days after receiving the tenants' request in writing containing the occupant's complete name.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from their next rent payment to recover their 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: February 17, 2023