



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **RR, RP, LRE, OLC, FFT**

### **Introduction**

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 26, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order granting a rent reduction;
- an order for regular repairs;
- an order restricting the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the Act; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant's Advocate J.B., the Landlords, and the Landlord's Agent L.S. attended the hearing. At the start of the hearing, the parties confirmed service of their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

### **Preliminary and Procedural Matters**

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

The Tenant as included a number of unrelated claims in their Application. At the start of the hearing, the Tenant was provided an opportunity to select the most pressing claim which they are seeking resolution with. The Tenant indicated they wished that the

Landlord comply with the Act with respect to the tenancy agreement and breaching the Tenant's quiet enjoyment. As such, the Tenant's request for a rent reduction, an order for regular repairs, and an order restricting the Landlord's right to enter the rental unit are dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord to comply with the Act, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 1, 2021. Currently, the Tenant pays rent in the amount of \$2,233.00 which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,100.00 and a pet damage deposit in the amount of \$1,100.00, which the Landlord continues to hold.

The Tenant stated that the Landlord is requesting that the Tenant sign a new tenancy agreement to add an additional occupant who has replaced a previous Tenant during the tenancy. The parties testified and agreed that the Tenant C.B. entered into a tenancy with her boyfriend. During the tenancy, the Tenants separated and Tenant C.B. continued to reside in the rental unit while her boyfriend vacated. The Tenant found a roommate to move into the rental unit.

The Tenant stated that the Landlords wish to sign a new tenancy agreement to reflect the names of the current Tenants, however, the Tenant stated that the Landlords are also attempting to increase the monthly rent to \$2,600.00. The Tenant stated that she does not consent to paying this amount. The Tenant stated that the original tenancy agreement does not indicate that the Tenant is not permitted an additional occupant, nor does it stated that the rent would increase if the Tenant added an additional

occupant. The Tenant stated that there have always been two occupants in the rental unit, therefore, the number of occupants has not changed.

The Landlords stated that they would like to have an accurate tenancy agreement which reflects the names of the currently occupants. The Landlords find that they are within their right to increase the rent as the Tenant has an additional occupant in the rental unit as they belong to two different families.

The Tenant is also claiming that the Landlords have breached her quiet enjoyment. The Tenant stated that the Landlords have overstepped the Landlord/Tenant relationship by asking how much the Tenant is charging her roommate for rent, asking the Tenant to turn off exterior lights, looking through windows in the garage, asking the Tenant about her health, entering the yard randomly, and entering the rental unit to repair a leak without permission.

The Landlords responded by denying that they asked about the Tenant's health or about her relationship. The Landlords stated the Tenant openly discussed these issues with the Landlords. The Landlords stated that they were exercising common courtesy by offering to help the Tenant, not intending on breaking boundaries. The Landlords stated that they are responsible for maintaining the yard at the rental property; therefore, they attend the rental property for that purpose.

The Landlords confirmed entering the rental unit after the Tenant reported a leak. The Landlords stated that the Tenant's roommate allowed entry and that the leak constitutes an emergency repair. Lastly, the Landlords stated that the Tenants had covered up the garage window and the Landlord could see a light emitting from the garage all day and night, therefore, the Landlords were concerned and inquired about what the Tenant was doing in the garage.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 13 of the Act requires that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004, and a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

Section 14 of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the Landlord and Tenant agree to the amendment.

The Landlord has requested that the Tenant sign a new tenancy agreement to add the replacement occupant to the tenancy agreement and also to increase the rent to \$2,600.00 per month. I find the original tenancy agreement does not contain a term that specifies how the rent will vary depending upon the number of occupants. Since there is no term that specifies a variance in rent for an additional occupant, any variance in rent needs to be agreed upon by both parties. I accept that the Tenant is not accepting the new rental agreement containing the increased amount of rent. I find that the Tenant is not required to pay the increased amount of rent proposed by the Landlords.

The Tenant is claiming that the Landlords have breached her quiet enjoyment by overstepping the Landlord/Tenant relationship by asking how much the Tenant is charging their roommate for rent, asking the Tenant to turn off exterior lights, looking through windows in the garage, asking the Tenant about her health, entering the yard randomly, and entering the rental unit to repair a leak without permission.

Section 28 of the Act states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The Residential Tenancy Branch Police Guideline 7 offers some useful information which is applicable to both parties in this situation;

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m. Notices must also be served in accordance with the Act.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlords have substantially interfered with the ordinary and lawful enjoyment of the premises beyond what would be considered a temporary inconvenience. I find that the Landlords are within their right to inquire about concerns they have relating to the rental property and would be permitted to attend to maintain the rental property which forms part of their responsibility as Landlords.

Lastly, I find that there is insufficiently evidence to demonstrate that the Landlords entered the rental unit without permission when responding to the Tenant's concerns regarding a leak in the rental unit, given the Tenant's roommate permitted the Landlords entry, I find that there is no breach.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful with her application, I find that she is entitled to \$50.00 which represents half the return of the filing fee, which may be deducted from one (1) future rent payment.

### Conclusion

The Tenant is partially successful with her Application. The Tenant is not required to enter into a new tenancy agreement increasing the amount of rent due. The Tenant is entitled to recover \$50.00 which represents the return of half the filing fee. The Tenant is permitted to deduct this amount from one (1) future rent payment.

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: March 06, 2023

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Residential Tenancy Branch