



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding North Winds Developments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision.

The tenant testified that she served the agent with a copy of this application for dispute resolution and evidence via registered mail on September 17, 2021. A registered mail receipt stating same was entered into evidence. The agent testified that he received the above documents sometime in September 2021 but could not recall on what date. I find that the agent was served with the above documents in accordance with sections 88 and 89 of the *Act*.

Both parties agree that the agent personally serve the tenant with the landlord's evidence on January 9, 2022. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,350.00 is payable on the first day of each month. A security deposit of \$675.00 was paid by the tenant to the landlord. A tenancy agreement was not signed. The parties have an oral tenancy agreement. The subject rental property is a two bedroom unit. At the start of this tenancy, only the tenant and her dog resided in the subject rental property.

Both parties agree that the tenant's adult daughter moved into the subject rental property in June 2021. Both parties agree that in July of 2021 the landlord asked the tenant to pay \$200.00 per month more in rent for the additional occupant. Both parties agree that the tenant has refused to pay the increase and that the landlord has continued to serve the tenant with letters seeking increased rent for the additional occupant and an eviction letter for the additional occupant. I note that the eviction notice is not on a Residential Tenancy Branch form.

The tenant testified that at the start of the tenancy, when the terms of the tenancy agreement were discussed, the agent did not restrict the number of occupants or state that additional occupants would cost extra. The tenant testified that she is seeking an Order for the landlord to comply with the *Act* by only increasing the rent in accordance

with the *Act*. The tenant testified that she does not owe the landlord additional rent for the additional occupant and that the landlord is not permitted to raise the rent for an additional occupant.

The agent testified that he cannot recall exactly what was said at the start of the tenancy, but that he did not intend to have anyone other than the tenant and her dog living at the subject rental property. The agent testified that he never had a discussion with the tenant about another person living there. The agent entered into evidence a text and an email from the tenant at the start of this tenancy showing that only the tenant and her dog moved in at the start of this tenancy. The email and the text do not mention additional occupants. The agent testified that the tenant did not ask him for authorization to have an additional occupant.

Analysis

Section 12 of the *Act* states:

- 12** The standard terms are terms of every tenancy agreement
- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
 - (b) whether or not the tenancy agreement is in writing.

Section 14 of *Act* states:

- 14** (1) A tenancy agreement may not be amended to change or remove a standard term.
- (2) 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.

Residential Tenancy Branch Policy Guideline #19 states that terms restricting the number of occupants or requiring prior consent of the landlord for additional occupants are not standard terms of a tenancy agreement under the *Act*. This means that a term restricting the number of occupants or requiring consent of the landlord for an additional occupant, are not automatically included in oral tenancies.

Residential Tenancy Branch Policy Guideline #13 states:

Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit.

Based on the testimony of both parties, I find that additional occupants were not discussed at the start of this tenancy, when the oral tenancy was formed. Therefore, pursuant to Residential Tenancy Branch Policy Guidelines #13 and #19, it was implied that **the tenant may have additional occupants** move into the rental unit and that permission was not required.

Rent increases are only permitted in limited circumstances under the *Act*. Pursuant to section 40 of the *Act*, a landlord is only permitted to increase the rent for additional occupants if it is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Section 13(2)(f)(iv) states that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out all the agreed terms in respect of 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

Based on the testimony of both parties, I find that the oral tenancy agreement did not contain a term stipulating a rent increase for additional occupants; therefore, **the landlord is not permitted to charge extra rent for additional occupants**. Pursuant to section 14 of the *Act*, after the start of the tenancy, the landlord cannot add in a nonstandard term without the agreement of the tenant. Based on the testimony of both parties, I find that the tenant has not agreed to add in a term requiring her to pay more rent for an additional occupant.

I find that the landlord breached Part 3 of the *Act* by attempting to increase the tenant's rent for an additional occupant when no such term was in the oral tenancy agreement. Pursuant to section 62 of the *Act*, I Order the landlord to comply with the rent increase rules set out in Part 3 of the *Act*.

As the tenant was successful in this application for dispute resolution, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

Pursuant to section 62 of the *Act*, the landlord is ordered to comply with Part 3 of the *Act*.

Pursuant to section 72 of the *Act*, the tenant is entitled to deduct \$100.00 from rent on one occasion.

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 17, 2022

Residential Tenancy Branch