



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEGAN PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an agent and both gave affirmed testimony. The landlord was represented at the hearing by an agent who did not testify, but gave closing submissions and was given the opportunity to question the tenant and the tenant's agent.

No evidentiary material has been provided by the landlord, and the landlord's agent agrees that the tenant's evidence has been received. All of the tenant's evidence therefore has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement with respect to restricting guests?

Background and Evidence

The tenant testified that this fixed-term tenancy began on September 1, 2015 and reverted to a month-to-month tenancy after August 31, 2016, and the tenant still resides in the rental unit. A copy of the tenancy agreement has been provided for this hearing, which specifies rent in the amount of \$1,650.00 per month in addition to 50% of the gas

and hydro. The tenant testified that rent is now \$1,780.00 per month, payable on the 1st day of each month and there are no rental arrears. On August 14, 2015 the landlord collected a security deposit from the tenant in the amount of \$825.00 which is still held in trust by the landlord, and no pet damage deposit was paid. The rental unit is one of 3 units in a house, and the landlord does not reside on the property.

The tenancy agreement specifies that:

-11- ADDITIONAL OCCUPANTS: When a person, not listed in Clause 1 or 2 above, resides on the premises without written permission of the landlord for a period in excess of two weeks in any calendar year, he shall be deemed to be occupying the premises contrary to this Agreement. This person shall be considered as a trespasser. Failure to obtain the Landlord's written approval for additional occupant(s) is considered to be a breach of contract and therefore grounds for Notice of Termination, which the Landlord may exercise."

The tenant seeks an order that the landlord comply with the *Residential Tenancy Act* with respect to guests without limiting or restricting guests or threatening eviction if the tenant has guests.

The tenant does not sublet, but has roommates who contribute to the rent and the tenant has tenancy agreements with the landlord's consent. The parties updated the tenancy agreement permitting 2 additional occupants, and a copy has been provided for this hearing.

The tenant received a template from TRAK, and used it to send a note to the landlord; a copy of which has been provided for this hearing. It sets out Section 9 of the Residential Tenancy Regulation Schedule:

- 9 (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 tenant's agent (DF) testified that he and the tenant are dating, and he does not reside in the rental unit. He has had his own home for 20 years and has no plans of moving into the rental unit.

On May 4 the tenant's agent was witness to a conversation between the landlord's agent and the tenant. The landlord's agent said that having guests for over 2 weeks was not permitted and that he could remove occupants if the tenant didn't comply with that condition of the tenancy agreement. The tenant was upset and the tenant's agent found out that the landlord cannot do that or write anything into the tenancy agreement that is not enforceable. The research also suggests that a landlord cannot unreasonably restrict guests under the *Residential Tenancy Act*, and more than 14 days in a calendar year cannot be considered an occupant. The tenant does not want to be under threat of being removed from her home.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord is not restricting guests. Paragraph (3) of the template document provided by the tenant states that 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. "Guests" should be considered occupants according to the tenancy agreement if they're staying so frequently that they should be considered occupants. Having too many occupants make higher utility bills, which has been mentioned to the tenant. Hydro costs have more than doubled, almost tripled from previous years, and the tenant pays 50%. The landlord has asked the tenant to increase the hydro contribution, but the tenant refused. The tenant can have 2 additional occupants, but has had more than that staying in the rental unit for so long. Other tenants have complained of the tenant doing multiple loads of laundry, doing laundry every day rather than the 3 days per week agreed upon.

Analysis

Firstly, I explained to the parties that it is not my role to clarify terms in a tenancy agreement, but to determine disputes after hearing testimony and examining evidence.

During the course of the hearing, I used the example that if I were to live in the rental unit, and my other came to visit 17 weekends in a year, that would more than constitute 14 days in a calendar year. Also, the term in the tenancy agreement does not specify "consecutive" days in a calendar year, which might be more appropriate.

The tenant gave the landlord a letter indicating that the *Act* does not permit terms that are unconscionable or contrary to the law, which states:

- 30** (1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
 - (b) a person permitted on the residential property by that tenant.

Subsection 9 (3) of the Residential Tenancy Regulation Schedule is also contained in that letter stating that if the number of occupants is unreasonable, the landlord may discuss it with the tenant and may serve a notice to end a tenancy. However, the onus would then be on the landlord to establish that the number of occupants is unreasonable at a hearing. In this case, the tenant wishes to avoid that. The landlord has permitted the tenant to have 2 additional occupants and the landlord made submissions that the hydro bill has increased 2 or 3 fold since the previous year, but has not provided any evidence of that. Further, the additional occupants that have been approved by the landlord no doubt do laundry as well, and there is no evidence that the tenant's agent has ever done laundry while visiting the rental unit.

Considering my example of having a person visit for multiple weekends over the course of a year, I am not satisfied that the tenant's agent visiting the tenant for overnight visits, who does not reside there is unreasonable. I find the term in the tenancy agreement to be unconscionable and contrary to the law.

I order the landlord to comply with Section 30 the *Residential Tenancy Act* as set out above, and Section 9 of the Residential Tenancy Regulation Schedule, rather than term 11 in the tenancy agreement as it is written.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the tenant as against the landlord, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby order the landlord to comply with Section 9 of the *Residential Tenancy Act* and Section 9 of the Residential Tenancy Regulation Schedule with respect to guests in the rental unit.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: September 17, 2022

Residential Tenancy Branch