



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

O

Introduction

This hearing dealt with the tenants' application to recover additional rent paid to the landlord and clarification of the enforceability of certain additional terms of the tenancy agreement. The landlord and one of the co-tenants appeared at the hearing. Both parties were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing, I determined that the tenants had not served all of their documentary evidence upon the landlord. I determined which documents were served upon the landlord and excluded the remainder of the tenants' evidence. Accordingly, only the documents served upon the landlord were considered in making this decision. The tenant was provided the opportunity to present all relevant evidence verbally.

Issue(s) to be Decided

1. Are the tenants entitled to recover additional rent paid to the landlord?
2. Are two additional terms of the tenancy agreement enforceable?
3. Is it necessary to issue orders for compliance?

Background and Evidence

On March 14, 2010 the parties signed a tenancy agreement for a one-year fixed term tenancy set to commence on April 1, 2010 (the first tenancy agreement). The monthly rent was set at \$950.00 payable on the 1st day of every month and the tenants paid a \$950.00 security deposit. Utilities are included in rent. Sixteen additional terms were provided on "Addendum A" also signed on March 14, 2010.

The parties signed a second tenancy agreement March 26, 2011 for a tenancy set to commence May 1, 2011. The monthly rent was set at \$970.00 payable on the 1st day of every month and the \$950.00 security deposit paid under the first agreement was

transferred to the second agreement. Utilities are included in rent. The parties also signed another Addendum A on March 26, 2011.

The parties are seeking enforcement and clarification with respect to additional terms 3 and 14, as provided on Addendum A.

Additional term 3 that appears on the Addendum signed March 14, 2010 and March 26, 2011 is identical and reads:

3. **Guest(s) can not stay more than 2 consecutive days without the landlord's permission.** Otherwise, additional rent may be required.

Additional term 14, as it appears on the Addendum signed March 14, 2010 reads:

14. **Additional utilities (Hydro/Gas) may be added** when lights are left on when not needed (ie: vacation, while you are sleeping, etc.) and windows are left wide open during cold weather with the thermostat turned on high.

Additional term 14, as it appears on the Addendum signed March 26, 2011 reads:

14. **Additional utilities (Hydro/Gas) may be added** when lights are left on when not needed (ie: vacation, while you are sleeping, etc.) and windows are left wide open during cold weather with the thermostat turned on high, or **excessive usage of utilities beyond norm**. Additional utilities must be negotiated and agreed by both parties.

[terms reproduced as written in Addendum]

It was undisputed that in September 2010 the tenants had two visitors stay for approximately two weeks and the tenants paid the landlord additional rent of \$250.00 on September 17, 2010. The tenants also had one visitor stay for approximately two weeks in December 2010 and the tenants paid the landlord additional rent of \$150.00 on December 21, 2010.

In making this application, the tenants are seeking to recover the \$400.00 of additional paid to the landlord for having guests. The tenants are also seeking clarification with respect to the enforceability of additional terms 3 and 14 provided on the Addendums. The tenants submitted that by way of additional term 3 the landlord is restricting their ability to have guests or visitors in the rental unit and this is in violation of the Act.

Further, the landlord has requested to know the identity of the tenants' guests which the tenants do not feel they have to provide to the landlord.

The landlord submitted that additional term 3 is intended to stop tenants from having additional occupants or guests staying in the rental unit because additional persons result in additional noise, utilities, and risk to the property. Additional term 14 provides a mechanism for the landlord to recover additional utility costs that may be incurred as a result of the tenants having guests. The additional terms were reviewed and agreed upon by the tenants when the tenancy agreements were signed. Further, the additional rent charges paid by the tenants were negotiated in good faith and agreed upon. The landlord requested that additional terms 3 and 14 be found valid and enforceable.

Documentary evidence considered in making this decision included the copies of the two tenancy agreements and their respective Addendums, and correspondence between the parties in early May 2011.

Analysis

At issue in this case is the enforceability of additional terms 3 and 14 of the two Addendums signed by the parties and the ability of the landlord to require the tenants to pay additional rent or utilities for having guests.

Section 28 of the Act protects a tenant's right to quiet enjoyment of the rental unit and residential property. Section 28 provides:

28 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 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 30 of the Act protects a tenant's right to have access to the residential property and have guests at the residential property and provides that the landlord must not unreasonably restrict access. Section 30 provides, in part,

- 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.

[my emphasis added]

Residential Tenancy Regulation 5 prohibits a landlord from charging a fee for a tenant having guests. Section 5 provides:

- 5** (1) A landlord must not charge a guest fee, whether or not the guest stays overnight.

The above rights are communicated in the tenancy agreements signed by the parties by way of standard term 11 entitled "Occupants and Guests".

In this case, the landlord prepared additional term 3 in an effort to prohibit the tenant from having guests stay more than one night without the landlord's permission. The Act permits parties to enter into additional terms; however, section 6(3) of the Act provides that any terms agreed to by the parties must meet certain criteria, otherwise the term is not enforceable. Section 6(3) provides:

- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Considering the above requirements of the Act and regulations, I find that additional term 3, as provided in the Addendum, to be inconsistent with the Act and regulations. I

find that the requirement for the tenants to seek the landlord's permission to have a guest stay more than two consecutive days to be unreasonably restrictive. Secondly, the provision to charge additional rent for guests is a violation of section 5 of the regulations. Therefore, I find additional term 3 to be unenforceable and the landlord was not, and is not, entitled to charge additional rent for guests.

With respect to additional term 14 of the Addendum signed March 14, 2010 I find the landlord not entitled to compensation as term 14 did not provide for payment of additional utilities as a result of the tenants having guests.

In light of the above findings, the tenants are entitled to recover the additional rent of \$400.00 paid to the landlord in September and December 2010.

With respect to additional term 14 signed March 26, 2011 I find the term is not expressed in a manner that clearly communicates the rights and obligations under it, as required under section 6(3)(c). The Addendum does not provide for a baseline for normal utility consumption. Further, it is unclear how the landlord would determine, without violating the tenants' right to reasonable privacy, whether a tenant is sleeping or has left a thermostat turned on high. Therefore, I find additional term 14 signed on March 26, 2011 is unenforceable and the landlord is not entitled to charge additional utilities.

Since the tenants were largely successful with this application I award the filing fee to the tenants. Therefore, I order that the landlord must compensate the tenants a total of \$450.00 for the additional rent received from the tenants and the filing fee paid by the tenants for this proceeding. The tenants are provided a Monetary Order to ensure payment of this award. Alternatively, tenants are authorized to withhold \$450.00 from a subsequent month's rent in satisfaction of this award.

Although I have found additional term 3 to be unenforceable, the parties continue to be bound by section 30 of the Act which provides for a landlord's right to restrict access to a tenant's guest(s) in unreasonable circumstances. I find it reasonable that the tenants seek the landlord's permission to have a guest stay for more than 14 consecutive days.

Finally, with respect to the security deposit, the tenants had not raised the excessive amount paid as part of this dispute. Accordingly, I make no order or award with respect to the security deposit; however, the parties were informed of a tenant's right to withhold any amount that exceeds the limit of a security deposit (one-half of a month's rent) from rent otherwise payable.

Conclusion

I have found additional terms 3 and 14 of the tenancy agreement to be unenforceable as they are inconsistent with the Act and regulations. I have ordered the landlord to compensate the tenants \$450.00 which they may deduct from a subsequent month's rent payment. I have found the landlord entitled to require the tenants to gain his permission where the tenants will have a guest stay for more than 14 consecutive days.

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: June 21, 2011.

Residential Tenancy Branch