



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT DRI CNL AS RR O

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy, as well as for an extension of time to apply to cancel the notice. The tenant also applied to dispute a rent increase and sought orders to allow the tenant to sublet and for a reduction in rent.

The tenant was out of the country at the time of the hearing and could not successfully dial in to the teleconference hearing. The tenant's sister acted as agent for the tenant in the hearing. The landlord, with the assistance of her lawyer, also participated in the teleconference hearing.

At the outset of the hearing the landlord stated that she had served the tenant with written notice that she was withdrawing the Notice to End Tenancy for Landlord's Use. In the hearing the tenant's agent agreed to withdrawal of the Notice, and I accordingly dismissed the portions of the tenant's application regarding cancellation of the Notice and an extension of time to apply to cancel the Notice.

In a second preliminary matter, the landlord and the tenant acknowledged that the landlord had not served the tenant with any Notice of Rent Increase. I therefore dismissed the portion of the tenant's application that sought to dispute a rent increase.

The landlord submitted some documentary evidence which the landlord's agent stated she did not receive. The landlord first mailed the evidence by registered mail on January 4, 2011 to the tenant's address. The package was returned to the landlord, and the landlord then sent the package on February 1, 2011 by registered mail to the tenant's agent's address. I determined that the landlord attempted to serve the evidence in accordance with the Act, and I admitted the evidence.

Issue(s) to be Decided

Should the tenant be allowed to sublet, after the landlord has unreasonably refused permission?

Is the tenant entitled to a reduction in rent for facilities agreed upon but provided?

Background and Evidence

The tenant first began renting the house in question on January 1, 2005. The tenant submitted a tenancy agreement signed by the tenant and her landlord at the time, TR. The tenancy agreement indicated that there was an addendum. The addendum, dated January 1, 2009, included a provision that the tenant had “the exclusive right to rent out the suite located on the first level of the rental home ... as she chooses and collect all rent charged for it.” The tenant has paid the landlord \$1500 in rent for the entire house and has rented out the first-floor suite since January 2005.

The current landlord, AR, took over as owner of the property on or about January 2010. The landlord submitted a new tenancy agreement signed by AR and the tenant on January 1, 2010. The new agreement indicates the tenancy was to be for a fixed term of one year, ending on December 31, 2010, with monthly rent in the amount of \$1500. The agreement did not indicate whether the tenancy was to end on December 31, 2010 or if it was to revert to a month-to-month tenancy. However, in the hearing the landlord testified that her understanding was that the tenancy was to revert to a month-to-month tenancy. The new agreement did not include any addendum or make reference to the first-floor rental suite. The tenant’s agent did not receive a copy of the landlord’s evidence and had no knowledge of this new tenancy agreement.

The tenant’s agent stated that the tenant applied for permission to sublet and a reduction in rent because of a letter that the tenant received from the landlord on January 16, 2011. In the letter, the landlord refers to “the person, whom you sublet, the rental unit in my house without my written consent.” The tenant thought that the landlord was referring to the first-floor suite. The tenant applied for permission to sublet the first-floor suite, and applied for a reduction in case the tenant lost the right to rent out the first-floor suite.

The landlord’s response was that she was not concerned about the first-floor suite; rather, she was concerned about the person(s) who have been residing in the upper portion of the house since the tenant left the country in January 2011. The landlord’s position is that those persons are subletting without permission. The tenant’s response was that the person in the upper part of the house are not subletting, they are house-

sitters. The landlord submitted that whether the occupants are paying any rent to the tenant or not, they have moved an additional horse onto the property, and they are therefore receiving some consideration that amounts to subletting.

Analysis

With no evidence to the contrary, I find that the tenancy agreement between AR and the tenant is the valid tenancy agreement. I accept the landlord's testimony that the tenancy was to revert to a month-to-month tenancy after December 31, 2010.

Assignment and subletting are only possible under a fixed-term tenancy, for the duration of the fixed term. Therefore, the tenant was in error when she applied for permission to sublet. Further, the tenant's evidence was that she was applying for permission to sublet the first-floor suite, and the landlord's concern was regarding the current occupants of the upper level of the house. The landlord was not attempting to remove the first-floor suite from the facilities included in the tenancy. I therefore dismiss the portions of the tenant's application regarding permission to sublet and a reduction in rent.

The tenant applied for her registered mail costs of \$11.38. The only cost associated with the hearing that is recoverable is the \$50 filing fee. In this case, the tenant's application was not successful, and I therefore find she is not entitled to recovery of the filing fee.

Conclusion

The tenant's application is dismissed in its entirety.

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 14, 2011.

Residential Tenancy Branch