



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application requesting an Order allowing the tenant to sublet the rental unit, requesting an Order the landlord comply with the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The tenant withdrew the portion of the application requesting permission to sublet.

Issue(s) to be Decided

Must the landlord be Ordered to comply with the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

This tenancy commenced on February 1, 2007, a deposit of \$523.50 was paid. Rent is currently \$1,188.00 per month, due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The tenant resides in an 860 sq foot studio apartment and has requested an Order that the landlord sign an amended tenancy agreement allowing the tenant to have a co-tenant who does not currently appear on the agreement.

The landlord does not wish to amend the agreement, adding another tenant.

The tenancy agreement submitted as evidence includes a term 8, "Additional Occupants," which prohibits guests from staying the rental unit for more than 2 weeks in any calendar year. If any such guest stays beyond 2 weeks the landlord considered those individuals to be trespassers.

Analysis

Section 14(2) of the Act provides:

(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.

The number of occupants in a unit is not a standard term of a tenancy, as provided by the Regulation. Therefore, the landlord may not be ordered to add another tenant to the agreement and the tenant's application is dismissed.

During the hearing I explained section 30 of the Act, which provides:

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.

The tenant is free to have guests come and go from her rental unit and may not be restricted from having guests from staying more than 2 weeks in any calendar year. A tenant is responsible for the behaviour of guests and any damage they may cause, while they are on the residential property.

Section 6(3) of the Act 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.

Therefore, as clause 8 of the tenancy agreement is inconsistent with section 30 of the Act; I find the clause is not enforceable.

Discussion occurred in relation to the difference between roommates and sublet. No finding or decision was made in relation to these matters. The parties were encouraged to reference the Act, Regulation and to speak with a Residential Tenancy Branch Information Officer, should they have any questions in relation to their rights and obligations under the Act.

As the landlord may not be ordered to sign an amended tenancy agreement, I decline filing fee costs to the tenant.

Conclusion

The tenant's application is dismissed.

Clarity has been provided in relation to clause 8 of the tenancy agreement; that it is not enforceable.

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: October 27, 2011.

Residential Tenancy Branch