



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

AS and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for authority to assign or sublet the rental unit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that on July 16, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 29, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were mailed to the Landlord on August 29, 2014. The Landlord acknowledged that he is in possession of these documents, although he cannot recall how they were received, and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Tenant be granted authority to sublet the rental unit or assign the tenancy agreement?

Background and Evidence

The Landlord and the Tenant agree that the parties entered into a fixed term tenancy agreement, the fixed term of which began on February 01, 2014 and ended on January 31, 2015. The parties agree that the tenancy agreement requires the Tenant to pay rent of \$1,650.00 by the first day of each month and that the Tenant is currently occupying the rental unit.

The Landlord and the Tenant agree that on July 07, 2014 the Tenant requested permission, via email, to sublet the rental unit. The parties agree that the Landlord sent an email in response to this request, in which he denied that request to sublet and informed the Tenant that if the Tenant vacated the rental unit prematurely it would be treated "as a lease break".

The Landlord and the Tenant agree that on July 07, 2014 the Tenant requested permission, via email, to assign the rental unit. The parties agree that the Landlord sent an email in response to this request, in which he again denied the request.

The Landlord and the Tenant agree that the Landlord told the Tenant they did not consider purchasing a home to be a valid reason for ending the fixed term tenancy prematurely. At the hearing the Landlord stated that this was one of the reasons for denying the request to sublet or assign the rental unit. He further stated that the request was denied "in principle" because he expects tenants to fulfill their agreements if possible.

The Tenant stated that he has purchased a new home and that possession date is October 03, 2014. He stated that he expects to incur significant costs if the Landlord does not agree to assign/sublet, as he will have to pay rent at the unit until the Landlord is able to find a new tenant.

The Managing Broker stated that the owner would incur significant costs if the Tenant was permitted to assign or sublet, such as the cost of conducting credit checks and turning the tenancy/rental unit over to a third party. The Landlord stated that in addition to these costs the owner would have been required to pay a "lease-up fee" of \$825.00 plus tax.

The Tenant stated that these concerns were never discussed with him and that he could have negotiated these costs with the Landlord if the costs had been identified as an issue. He stated that he intended to incur the costs of advertising the rental unit and that he has already advertised the rental unit to determine if there is interest.

The Landlord stated that he did not discuss the costs of assigning or subletting the rental unit because the Landlord did not consider assigning or subletting to be an option.

The Landlord and the Tenant agree that there is a clause in the addendum to the tenancy agreement, which stipulates that a \$300.00 administration fee will be charged if the owner agrees to assign/ sublet.

Analysis

On the basis of the undisputed evidence, I find that the parties entered into a fixed term tenancy agreement, the fixed term of which began on February 01, 2014 and ended on

January 31, 2015.

Section 34(2) of the *Act* stipulates that if a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold consent after receiving a tenant's written request to assign or sublet the rental unit. On the basis of the undisputed evidence, I find that on July 07, 2014 the Tenant asked for consent to assign and to sublet the rental unit, via email. This serves as a written request.

I find that it was unreasonable for the Landlord to withhold consent to sublease or assign the tenancy simply because the Tenant had purchased a home. In my view, the Tenant's reason for wishing to assign or sublet the rental unit is largely irrelevant, as that is a personal decision over which the Landlord should have no influence. In my view, it is only reasonable for a landlord to withhold consent to assign/sublet if the assignment or sublease will have a significantly negative impact on the landlord.

Assignment is the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. The assignee takes on the obligations of the original tenant commencing at the time of the assignment, and is not responsible for actions or failure of the assignor to act prior to the assignment. Unless the landlord agrees otherwise, the original tenant may retain some residual liability, in the event of a failure of the assignee to carry out the terms of the tenancy agreement or lease.

A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

I find that the Landlord did not need to incur any costs if the Landlord had given consent to sublet the rental unit. As the Tenant would have become the sub-tenant of the Tenant, the Tenant would remain obligated to pay the rent if it was not paid by the sub-tenant and/or to compensate the Landlord for any damage to the rental unit. The Landlord did not, therefore, need to complete a credit cheque for the sub-tenant.

Similarly, the Landlord would not have incurred the costs of turning the rental unit over to a third party or for a "lease-up fee" if the Landlord had consented to sublet. These costs would have been unnecessary as the original tenancy agreement with the Tenant would remain intact.

As there are no necessary costs to the Landlord in regards to a sublet, I find that it was unreasonable for the Landlord to withhold consent to sublet. I therefore grant the Tenant's application to sublease the rental unit.

I find that the Landlord submitted insufficient evidence to establish the costs it would incur if the tenancy was assigned. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Landlord's testimony that the owner would be charged a "lease-up fee". While I accept that there are potential administrative costs of assigning a tenancy, such as the cost of conducting credit cheques and turning the tenancy/rental unit over to a third party, the Landlord has not submitted any evidence to establish those costs. In the absence of proof that the costs are substantial, I find the Landlord has failed to establish that it was reasonable to withhold consent to assign the tenancy. In making this determination I note that many of the administrative costs associated to renting a unit is the cost of advertising and showing the unit, which with an assignment would be the responsibility of the Tenant.

I therefore grant the Tenant's application to assign the tenancy with the proviso that the Landlord can refuse to assign the tenancy to a particular person(s) if the Landlord has reasonable grounds to conclude that the person is not a desirable tenant.

I note that the clause in the addendum that specifies the Tenant must pay an administration fee of \$300.00 if the unit is sublet or that tenancy is assigned, is completely unenforceable. This decision is based on section 33(4) of the *Act*, which clearly specifies that a landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease.

As the *Act* clearly prohibits a landlord from charging for an assignment or sublease, it is clear to me that the *Act* does not contemplate costs to be a reasonable reason for withholding consent. In the absence of evidence to show that the Landlord will suffer an extraordinary expense as a result of the assignment/sublease, I cannot conclude that the Landlord has reasonable grounds to withhold consent.

Conclusion

The Tenant's Application for Dispute Resolution has merit and I authorize the Tenant to reduce one monthly rent payment by \$50.00 in compensation for the fee paid to file this Application.

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 16, 2014

Residential Tenancy Branch

