



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vinewood Development Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, AS, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld; and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the first day scheduled and was adjourned for a continuation of testimony. The tenant and an agent for the landlord company attended on both scheduled dates and the landlord called 1 witness. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties and the witness each gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the landlord be ordered to allow the tenant to assign or sublet, because the landlord's permission has been unreasonably withheld?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to allow the tenant to sublet a portion of the rental unit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on August 1, 2013 and expires on July 31, 2015. The tenant still lives in the rental unit. Rent in the amount of \$1,350.00 was payable in advance on the 1st day of each month, which was raised to

\$1,375.00 effective August 1, 2014 and there are no rental arrears. The landlord did not serve the tenant with a 3 Month Notice to Increase Rent, however the parties signed a new tenancy agreement on July 23, 2014 which increased the rent and the increase was pointed out to the tenant at the time of signing. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$775.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The tenant advertised a room for rent on Craigslist, a free on-line advertising website, since the tenant had already been a roommate with another tenant prior who had moved out, and a lot of interested applicants applied.

The landlord gave the tenant applications for prospective roommates to complete and the landlord stated that he would let the tenant know whether or not anything more was required. The tenant gave the landlord a total of 5 completed applications. The first application was provided to the landlord and on July 4, 2014 the landlord emailed the tenant stating that the person was not approved, but gave no reasons other than saying that the decision was based on the application. The second application was on July 15, 2014 and again the landlord refused to approve because of a 1 year lease or the person not having local employment. The third application was withdrawn by the applicant; the landlord asked the tenant about sections of the tenancy agreement, being about the primary tenant, and about pets and parking but had not asked about those sections for other applicants. There has been no consistency in the landlord's approval process and the landlord has left the impression that the landlord has been deliberately difficult. Each of the applications was given to the landlord to approve, and all have been denied. The landlord has unreasonably required that any roommates sign a 1 year lease, and roommates don't want to do that; they would be moving in with the tenant who would be a stranger and it's not feasible to believe that they would be compatible for a year. The tenant wants to leave the tenancy agreement in place and take all responsibility for the rental unit and deal with roommates as necessary, but the landlord is unreasonably withholding consent.

The tenancy agreement states: "**14. Assignment and Subletting.** The tenant shall not assign or sublet the Premises without obtaining the prior written consent of the Landlord. No assignment or subletting shall operate so as to relieve the Tenant of its obligations hereunder, and the Tenant shall remain liable for the performance of the terms and provisions of this Lease unless the Landlord specifically agrees otherwise in writing."

The tenant further testified that the landlord has claimed several times in emails to the tenant that the landlord has been cooperative, but the tenant disagrees. The landlord

continued to disallow other roommates and then stated that a roommate would have to sign a lease for the full term of the tenancy, but had never mentioned that with respect to the previous applicants or that sub-letting was not an option. The tenant replied to the landlord in an email on August 11, 2014 clarifying what the tenant had meant about subletting and provided the landlord with a Policy Guideline from the Residential Tenancy Branch. Copies of the emails have been provided. The landlord states in an email that one of the persons had been approved, as well as another, but he hadn't, then the landlord had a change of heart with respect to the tenant's new roommate, who has moved in.

The tenant further testified that rent has always been paid on time and there have been no complaints by other tenants with respect to this tenancy. When the tenant first moved in, the tenant had a roommate and the landlord didn't have the parties complete an application.

The tenant requests an order that the landlord comply with the *Residential Tenancy Act* by allowing the tenant to sub-let.

The landlord's agent testified that he knew the tenant was looking for a roommate and the landlord reserved the right to deny them and has made an effort to do that in a timely manner. The landlord has received 5 applications in total, accepted 3 and denied 2, but does not make a habit of telling tenants why roommates aren't approved. The landlord's agent suggested to the tenant that the parties could modify the lease to add a roommate and make it for an 8 month term as opposed to 12, but received no response from the tenant.

On September 15, 2014 the landlord wrote a letter to the tenant knowing the tenant had allowed an unauthorized sub-let, but the landlord offered to discuss it. That was not meant to be threatening. He testified that prior to that he offered to accept one of the roommates and that due to the time frame there may have been some confusion. The tenant had never asked to sub-let; all applications were dealt with as co-tenancies, not sub-letting. The landlord does not want to make a tenant liable for repairs required that have been caused by another person, and some tenants are not aware of the extent that it benefits them.

He stated that the application process involves running financial and background checks and that the applicant has employment or to see if there are visa issues or other issues preventing the person from meeting the terms of the lease. The rental building has 13 units and the landlord has another building with 13 units, and has been able to work with tenants on this issue in the past and would be willing to do that now.

He further testified that had the landlords been aware of an intention by the tenant to sub-let, the landlords wouldn't have offered a 1 year fixed term, but would have discussed it with the tenant and prepared a lease accordingly. The landlord would be willing to accept all costs associated with co-tenancy, and it was clear to the tenant that the terms were for her to sign on a co-tenancy basis and if she collected more rent than she paid, she was able to control that.

The current roommate of the tenant has not taken legal residence on the property, nor did the tenant let the landlord know. The landlord is not denying the tenant's right to sub-let, but the landlord has the right to know. The landlord has not been given fair notice of the tenant's intentions and would have appreciated more open communication and dialogue. The landlord tried to work with the tenant up to the filing date of the dispute, and it still is not the preference of the landlord to evict either the tenant or current roommate. The landlord's agent first learned that the tenant wanted to sub-let as opposed to a co-tenancy was between August 11 and 13, and the tenant was sent an email on August 15, 2014 advising that the current roommate had been approved as a co-tenant, but the landlord's agents never heard back from the tenant up to September 15, 2014. If the landlord had heard back, the landlord's agents would have worked with the tenant. Further, rather than waiting for the dispute resolution hearing, the tenant moved someone in.

The landlord's witness is an employee of the landlord company and testified that he discussed a co-tenancy with the tenant twice, the first of which was during the signing of the tenancy agreement, where it was discussed in detail. The parties exchanged emails between August 11 and 13 and it was obvious to the witness that the tenant was not clear about the difference between sub-letting and a co-tenancy. The parties had a legally binding agreement in place. The witness provided at least 2 options to the tenant but the tenant didn't respond, and there was no discussion about it; the landlord asked for information but the tenant filed for dispute resolution. Essentially there may not have been a need for a sub-let, but before discussions had concluded, the tenant moved in another occupant.

The witness further testified that each email from the landlord's agents stipulated over and over that a co-tenancy arrangement would be considered. To look for another arrangement would require another tenancy agreement. The landlord's agents tried to clarify it for the tenant and tried to find a way through it. The only contravention has been the tenant moving in another occupant without the landlord's permission. The landlord's agents also thought that the tenant had wanted to change the lease and have

someone to help pay the rent. The tenant would select the roommate and the landlord's agents would vet them. The landlord has not been uncooperative.

Analysis

I have reviewed the evidence provided by the parties and in particular the tenancy agreement. I also accept the testimony of the parties, and it's clear that the tenant wanted to sub-let. The tenant takes the position that the landlord has unreasonably withheld consent, and that it's the tenant's right to obtain a roommate by way of a sub-let and not a co-tenancy. The landlord takes the position that the landlord has a right to ensure that other occupants are covered by their own tenancy agreement.

In the circumstances, I find that the real issue is whether or not the landlord's agents have been unreasonably withholding consent. The landlord's agents have both testified that they were willing to work with the tenant right up to the date of this hearing and are still willing to do so, but rather than discussing it further, the tenant applied for arbitration and allowed another occupant to move in. I find that it is the tenant who has been unreasonable, not the landlords, and the tenant's application is hereby dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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: November 04, 2014

Residential Tenancy Branch

