



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, AS, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order, a dispute of a rent increase and an order allowing the tenant to sublet the rental unit. Both parties participated in the conference call hearing.

The tenant had initially sought an order compelling the landlord to restrict the noise produced in the suite immediately above the rental unit but at the hearing, the tenant advised that this issue had been resolved. I consider that claim to have been withdrawn.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Should the landlord be ordered to permit the tenant to sublet the rental unit?

Should the landlord be ordered not to sell the rental unit?

Background and Evidence

The parties agreed that the tenancy began in January 2014. Rent was set at \$1,350.00 per month plus 40% of utility costs. The rental unit is in the basement of a home in which the landlord occupies the upper floor.

The tenant sublet a room in the rental unit to a student for the month of December. The parties agreed that when the landlord discovered that the tenant had sublet the room, he confronted her about it. The tenant claimed that the landlord demanded that she pay \$175.00 while the landlord's agent testified that the tenant offered the landlord the money. The tenant now seeks an order compelling the landlord to return the money to her and characterized the payment as an illegal rent increase.

The tenant seeks an order compelling the landlord to permit her to sublet a room in the rental unit. The landlord's agent testified that because the landlord spends much of his time overseas leaving at home his wife and 5 year old son, he is concerned about strangers being in the house as it makes his wife nervous.

The tenant testified that at the beginning of the tenancy, the landlord assured her that they would not sell the residential property, but recently the landlord listed the property for sale. The tenant seeks an order stopping the landlord from selling the property. At the hearing, the landlord's agent testified that the landlord does not intend to sell the home.

Analysis

In order to sublet the rental unit, the tenant must first obtain the landlord's written permission in accordance with section 34(1) of the Act. When the tenant sublet the unit in December 2014, she did not have the landlord's written permission and when the landlord confronted her, I find it likely that she offered the landlord money in order to preserve her tenancy as she was aware that he could end her tenancy for illegally subletting the rental unit. I find that this cannot be characterized as an illegal rent increase, but that the parties at that time entered into an agreement that the landlord would overlook the tenant's breach of the Act in exchange for the offered payment. I find insufficient evidence to show that the landlord demanded money. As the parties entered into an agreement which does not conflict with the Act, I find that the tenant is not entitled to the return of the \$175.00 payment and I dismiss this claim.

I decline to order the landlord to grant the tenant permission to sublet the unit. If the tenant wishes to sublet a room in the rental unit, she should obtain the information of the prospective sub-tenant and submit that information to the landlord so he can determine whether this person is a suitable tenant. The landlord cannot unreasonably withhold consent and should respond to the tenant's request in writing. If the tenant believes the landlord has unreasonably withheld consent, she may apply to the Residential Tenancy Branch for an order compelling the landlord to permit her to sublet. As the tenant has not followed the proper procedure, I dismiss this claim.

I also dismiss the tenant's claim for an order prohibiting the landlord from selling the residential property. The landlord did not agree in writing that the property will not be sold and in any event, the tenancy is secure as it will not end until the end of the fixed term.

As the tenant has been wholly unsuccessful, she will bear the cost of her filing fee.

Conclusion

The claim 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: May 19, 2015

Residential Tenancy Branch

