



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, OLC, FF

Introduction

This was a hearing with respect to the tenant's application for an order directing the landlord to approve an assignment of the tenancy agreement. The hearing was conducted by conference call. The tenant and the named landlord called in and participated in the hearing. Ms. S.A. also attended as the landlord's representative.

Issue(s) to be Decided

Should the tenant's interest in a fixed term tenancy agreement for a term commencing May 1, 2015 and ending April 30, 2016 be assigned to a third party?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. Pursuant to a tenancy agreement dated April 17, 2015 the tenancy is for a fixed term commencing May 1, 2015 and ending April 30, 2016. The named landlord is a real estate management company. There are three named tenants of which the applicant is one, who share the occupancy of the rental unit. The tenancy agreement provides that at the end of the fixed term the tenants must move out of the rental unit. The tenancy agreement contains the provision that: "NO SUBLETTING PERMITTED".

The tenant testified that he requested the landlord's permission to assign his interest in the tenancy agreement to another person who would move into the rental unit and share the apartment with the two remaining tenants. The tenant requested that his name be removed from the tenancy agreement and he be relieved of any obligations under that agreement for the balance of the term.

The landlord responded to the tenant's request by e-mail. In an e-mail to the tenant dated February 26, 2016 the landlord's representative said:

As mentioned previously, we made it very clear that we would not consider a lease assignment as there is only two months left on the lease. Therefore your name will not be removed during the current lease term and are still responsible for the tenancy until April 30, 2016.

We were only willing to go through this whole process if (names of other tenants) were willing together to sign a new lease for March 1, 2016 until April 30, 2017.

Therefore (name of prospective tenant) would not be able to move in at all; however, there may be a possibility in future after the current lease term ends. But that is dependent on (names of other tenants)

The applicant did move out of the rental unit and his prospective replacement moved into the unit in his place. The applicant then filed this application for dispute resolution seeking approval of the assignment to the new occupant.

The parties advised me at the hearing that the tenancy will end in three days on April 30th. The landlord has not entered into a new tenancy agreement with any of the occupants of the rental unit and the occupants will be required to move out of the rental unit on April 30th.

Analysis

The three tenants named in the tenancy agreement are co-tenants of the rental unit. The Residential Tenancy Policy Guideline with respect to the rights and responsibilities of co-tenants provides that:

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord. Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and

tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

The *Residential Tenancy Act* provides by section 34:

Assignment and subletting

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

The tenant requested that a decision or order be made to retroactively approve his request to assign his interest in the tenancy so as to absolve him of any liability to the landlord for any claim arising out of the tenancy agreement. He requested that the tenancy agreement be amended to remove his name from the agreement and to replace it with the name of the new occupant. The tenant's position is the landlord unreasonably withheld consent to the assignment and he should therefore be entitled to the remedy claimed.

Although it appears that the landlord's refusal to agree to the assignment for the sole reason that there was only two months remaining may be construed as an unreasonable refusal, I do not accept the tenant's submission that his application to assign the tenancy should be retroactively approved.

If the tenant contends that the landlord has unreasonably withheld consent, his remedy is to make an application for dispute resolution, but he is not entitled to put a new tenant into possession before the application is heard. The second concern is that an assignment of a tenancy is intended to be an assignment of the whole of the tenancy, not merely a transfer of one co-tenant's interest in the tenancy when there are multiple tenants sharing the unit under one tenancy agreement. Even if the landlord was prepared to allow a new occupant to move into the rental unit in place of the tenant for

the balance of the term, this could be accomplished only with the consent of the co-tenants and the landlord would not be required to release this tenant from his obligations under the tenancy agreement. The tenant may have joint and several obligations with respect to the condition of the rental unit at the end of the tenancy and there may be claims for cleaning and repairs brought by the landlord after the tenancy ends.

Because the tenant has moved out of the rental unit and permitted a third party to have occupancy of the rental unit in his place before this application was heard and because the tenancy will end on April 30, 2015, I find that it is not appropriate to amend the tenancy agreement to remove the tenant from the agreement as requested in this application.

Conclusion

The tenant's application is dismissed without leave to reapply. I make no order with respect to the filing fee for 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: April 27, 2016

Residential Tenancy Branch