



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, AS, FF

Introduction

On May 25, 2016 a hearing was conducted via conference call between these two parties. The tenant served the landlord by registered mail with the notice of hearing package seeking a monetary order for money owed or compensation for loss, a finding that the landlord unreasonably withheld consent to sublet and recovery of the filing fee. The tenant attended the hearing and provided undisputed evidence. The landlord did not attend. The tenant was granted a monetary order for rental loss and recovery of the filing fee. The landlord applied for a review of this decision for being unable to attend. The arbitrator ordered the decision and accompanying order suspended pending a review hearing for the landlords' application.

This is a review hearing granted for the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a finding that the landlord's permission has been unreasonably withheld to sublet the rental premises pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord provided affirmed testimony that the tenant was served with notice of a review hearing via Canada Post Registered mail on June 21, 2016. The tenant confirmed receipt of the notice of hearing package in this manner. Both parties confirmed receipt of the submitted documentary evidence from the other party. As both parties have attended and have confirmed receipt of the notice of a review hearing and the submitted documentary evidence as per sections 88 and 89 of the Act, I find that both parties have been properly served as per section 90 of the Act and are deemed served 5 days later.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss of rental income and recovery of the filing fee?

Did the landlord unreasonably withhold permission to sublet the rental premises?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on September 10, 2015 on a fixed term tenancy ending on September 14, 2016 as shown by the submitted copy of the signed tenancy agreement dated September 10, 2015. The monthly rent is \$1,650.00 payable on the 1st day of each month and a security deposit of \$825.00 was paid on September 10, 2015.

The tenant seeks a monetary claim of \$4,125.00 which consists of:

\$4,125.00 = 2.5 months loss of rental income at \$1,650.00 month

The tenant provided affirmed testimony that the landlord unreasonably withheld permission to sublet the rental premises for a 2 ½ month period beginning May 1, 2015. The tenant stated that a request was made to the landlord verbally on April 17, 2016 for permission to sublet the premises on May 1, 2016. Both parties confirmed that the tenant provided a written request via email on April 18, 2016. The tenant stated that he had found a candidate via the internet and had forwarded a copy of the prospective sublet tenant's picture identification to the landlord on April 19, 2016. Both parties confirmed that the landlord responded to the email on April 20, 2016 which stated,

Hello Mr. M.

I decline your request to sublet the rental unit...

And my reasons are:

- 1- I have to meet them.*
- 2- I need to reference check them.*
- 3- I need credit check*
- 4- Screening*

And also I should be able to check on them while you are away. As you know the cost of repair and maintenance is high, and if any negligence from them causes any damage to the unit or the building, the price to repair is unimaginable. There your request is declined.

Also I have to mention that subletting the unit without my consent, would be the one month notice to leave the unit.

The tenant stated that the landlord was advised that tenant must leave the city on April 23, 2016 and return in July of 2016 and that an answer is required immediately. The landlord provided affirmed testimony that he was first advised on April 17, 2016 that the tenant had to leave town on April 23, 2016. The landlord stated that the tenant would have to provide him with sufficient

information to make an informed decision for a tenant. The landlord provided testimony that he would require more than just a copy of someone's picture identification to accept him as a tenant.

The tenant provided affirmed testimony that upon receiving this email he scheduled an appointment between the landlord and the prospective tenant. At that meeting, the tenant stated that the landlord did not attend. The landlord disputed this stating that at no time did the tenant advise him that a meeting was scheduled to meet the prospective tenant. The landlord stated that he was informed that the tenant was going to meet the prospective sublet tenant. The tenant stated that this was all verbal and that he does not have any evidence to support this claim.

The landlord reiterated that the new sublet tenant must go through the same application process as that done with the tenant. The landlord stated that the tenant at no time provided any of the prospective sublet tenant's particulars other than a copy of the picture identification.

Analysis

Section 34 of the Act provides that unless the landlord consents in writing, a tenant must not assign or sublet a rental unit. Section 34 also provides that if a fixed term tenancy is for 6 months or more, the landlord must not unreasonably withhold consent.

Both parties confirmed that a fixed term tenancy for one year was agreed to by both parties. The tenant has provided affirmed evidence that the landlord unreasonably refused his consent to sublet. The tenant stated that he provided the landlord with the prospective sublet tenant's picture identification which is sufficient for the landlord to screen by checking his references and credit history. The landlord has confirmed receipt of the picture identification, but stated as per his email to the tenant that he would require more information other than the picture identification. The tenant confirmed in his direct testimony that no other particulars of the prospective sublet tenant were provided to the landlord.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Both parties have provided conflicting and contradictory evidence. On this basis, I find that the tenant

has failed to provide sufficient evidence that the landlord unreasonably withheld permission to sublet the rental premises. The tenant's assertion that all could be learned from the prospective sublet tenant's picture identification is flawed. The landlord refused on this basis citing that the tenant would need to provide more such as:

And my reasons are:

- 5- I have to meet them.*
- 6- I need to reference check them.*
- 7- I need credit check*
- 8- Screening*

As such, the tenant's monetary claim is dismissed.

Conclusion

The tenant's application is 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: July 22, 2016

Residential Tenancy Branch

