



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, AS, FF, O

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord’s compliance - Section 62;
2. An Order allowing a tenant to sublet or assign the unit - Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant confirmed that he is not seeking to sublet or assign the unit and is only seeking to have his sister live with him for an undetermined period of time. Given this evidence I find that the claim in relation to a sublet has no basis and I dismiss this claim. No evidence was provided in relation to the “Other” claim and this claim is therefore unknown and not considered.

Issue(s) to be Decided

Has the Landlord acted to unreasonably restricted guests or roommates?

Is the Tenant entitled to an order for the Landlord’s compliance?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 1, 2014. Rent of \$1,234.00 is currently payable on the first day of each month.

The Tenant states that the Landlord has been harassing him and his guests and has informed the Tenant that he may not have his sister reside in the unit with him. The Tenant states that in August 2016 his sister moved from Ontario after completing her studies and that the Tenant has his sister living with him to help her find a job, develop her career and live a responsible life until his sister is able to have her own residence. The Tenant states that there is no other family present for the sister to live with. The Tenant states that he informed the Landlord of his sister being in the unit and sought the Landlord's permission and the Landlord has told the Tenant that he may not have the sister live with him. The Tenant provides a letter from the Landlord informing the Tenant that if the Tenant remains in the unit beyond 6 weeks the Landlord will consider this a material breach of the tenancy agreement and the Landlord will take steps to end the tenancy. The Tenant states that the unit is a one bedroom unit and that his sister is sharing the bedroom with the Tenant. The Tenant states that they make no noise and rent is paid on time.

The Landlord states that paragraph 13 of the tenancy agreement provide that occupancy of the unit is restricted to the Tenant and that any person who is not a tenant that resides in the unit for longer than 14 cumulative days will be considered an occupant and in that case the Tenant must apply for the Landlord's permission. The Landlord states that paragraph 44 of the tenancy agreement restricts the unit to one person only and no roommates are allowed. The Landlord states that these paragraphs are in the tenancy agreement to try and prevent move-ins without the Landlord's awareness, because the unit is only 536 square feet and because they apply national occupancy standards that set out a standard of one bedroom each for non-cohabitating adults. The Landlord agrees that this standard when applied could lead to discrimination or breaches of privacy and that for this reason they restrict occupancy so that they do not have to make such inquiries.

The Landlord states that they have this restriction in place to prevent air bnb rentals from taking place. The Landlord states that they have a right to decide who can live in a unit or be a tenant.

Analysis

Section 30 of the Act provides that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by that tenant.

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act. Section 23 of the Act provides that a tenant is entitled to quiet enjoyment including, rights to reasonable privacy and freedom from unreasonable disturbance.

Although the Landlord states that the reason for the restriction of guests, occupants or roommates is because they apply a national standard, given the Landlord's evidence that this standard can lead to discrimination or breaches of privacy I find that the application of the standard does not operate as a reasonable restriction. Although the Landlord states that the restriction is to prevent air bnb rentals, this is not a similar situation as an air bnb is a sublet. There is no evidence that an additional occupant will increase any costs such as utilities that are included in the rent. Should an extra occupant or roommate cause any disturbances, the Landlord has recourse under the Act to address this situation.

For these reasons I find that the tenancy agreement provisions that restrict guests of longer than 2 weeks or roommates or additional occupants are therefore in place only as a blanket restriction. I do not consider blanket restrictions in the tenancy agreement to be reasonable and I find that paragraphs 13 and 44 therefore unreasonably restrict access to the unit of the Tenant's sister. As this section of the tenancy agreement is inconsistent with the Act that disallows unreasonable restrictions I find that these paragraphs in relation to guests or roommates are not enforceable. I therefore order the Landlord to cease attempting to stop the Tennant from allowing his sister access to

the unit. I also order the Landlord to cease telling the Tenant that he will be evicted for having his sister reside with him. Should the Landlord continue this behavior the Tenant has leave to reapply for compensation for breach of the Tenant's right to quiet enjoyment of the unit.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the \$100.00 filing fee and that Tenant may deduct this amount from future rent payable.

Conclusion

I order the Landlord to comply with the Act and to cease restricting the Tenant from having guests longer than 14 days or from having a roommate.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 28, 2016

Residential Tenancy Branch