



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, DRI, FF, MNDC, OLC, OPT

Introduction

This is an application brought by the tenant requesting an order of possession of the rental unit, requesting an order allowing access to the rental unit, disputing a rent increase, requesting an order for the landlord to comply with the Residential Tenancy Act, and requesting a monetary order in the amount of \$650.00.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue to be determined is whether or not the applicant sublet this rental unit with the landlord's permission, or whether the tenancy ended and the landlord re-rented the unit to another person.

Background and Evidence

The applicant testified that she was in a month-to-month tenancy agreement with the landlord with a monthly rent of \$1000.00, and that she had paid a security deposit of \$500.00.

The applicant is claiming that she got written permission from the landlord to sublet this rental unit and therefore in September 2015 she entered into a fixed term tenancy agreement with a subtenant, with an end of tenancy date of May 31 2016.

The applicant further testified that her agreement with the subtenant required that the subtenant paid her \$1200.00 per month.

The applicant further testified that her fixed term tenancy agreement with the subtenant was subsequently extended to the end of July 2016.

The applicant further testified that when she moved out of the rental unit the landlord returned her security deposit; however the landlord insisted that the subtenant pay him \$1050.00 per month, and therefore she only collected \$150.00 per month from her subtenant to bring the total to \$1200.00 per month.

The applicant further testified that when she informed the landlord that she wanted to move back into the rental unit, the landlord stated that she could not move back into the rental unit unless she was willing to pay an increased rent of \$1200.00 per month, and if she did not she could not move back into the rental unit.

The applicant is therefore requesting an Order of Possession allowing her to move back into the rental unit.

The applicant also stated she is requesting an order that the landlord return the extra \$50.00 per month that he collected from her subtenant, when in fact the rent should only have been \$1000.00 per month and that \$50.00 should have been coming to her.

The applicant also testified that her subtenant is now refusing to pay the extra \$150.00 per month to her, claiming that she is in a tenancy agreement with the landlord, and therefore she is requesting an order that the landlord pay the \$150.00 per month that the tenant should have been paying.

In response to the tenant's testimony the landlord testified that he did originally sign a letter agreeing to let the applicant sublet the rental suite, however the applicant subsequently told him that she was ending her tenancy, and requested the return of her security deposit, which was returned in full.

The landlord further testified that he was never informed that the applicant had entered into a sublet agreement, and therefore he took on the new tenant as his tenant, with a new rent of \$1050.00 per month.

The landlord further testified that, had he known that the applicant was planning to enter into an 8 month sub tenancy agreement, he would not have agreed to it, as the applicant was in a month-to-month tenancy, and therefore was not allowed to enter into a fixed term tenancy agreement, as it exceeded the term of her tenancy.

The landlord states that he fails to see how he can be held liable for a sub tenancy agreement which the applicant entered into without having the right to do so and without his knowledge.

The applicant requests that this application be dismissed in full, especially since he has a tenant in the rental unit, and it would be grossly unfair to evict her so that the applicant could move back in.

Analysis

It is my finding that, on August 13, 2015, the landlord did give the tenant permission to sublet her rental unit; however this permission did not give the tenant the right to sublet the unit for longer term than she was renting the unit for, which was a month-to-month tenancy.

In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. **In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.** (My emphasis in bold)

Therefore, although the landlord did agree to allow the applicant to sublet, the applicant could only sublet on a month-to-month basis, and since she entered into a fixed term sublet agreement, it's my finding that this was done without authorization from the landlord.

Further, the fact that the landlord returned the applicant's security deposit, and has accepted rent payments from the new tenant indicates to me that this tenancy did end when the applicant moved out, and I accept that the landlord was totally unaware that the applicant had been collecting extra funds from his new tenant for a sub tenancy she entered into without his permission.

Further, had the applicant really gotten the landlords permission to enter into an 8-month fixed term sub tenancy at \$200.00 per month more than she was paying, I find it very unlikely that she would have allowed the landlord to keep \$50.00 per month of that money for himself for so many months. I find it more likely that she didn't complain as she had not inform the landlord that she had signed a fixed term tenancy agreement with his new tenant.

It is my decision therefore that the applicant does not have the right to an Order of Possession, nor has she established that there was ever an illegal rent increase.

It's also my finding that the landlord is not liable for any lost rental revenue that the applicant is claiming from a sub tenancy she entered into without the knowledge of the landlord.

Conclusion

This application is dismissed in full without leave to reapply.

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 17, 2016

Residential Tenancy Branch