



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DREAMZ 100 HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenant applied for an order to cancel the notice to end tenancy. Both parties applied for the recovery of the filing fee.

The landlord acknowledged receipt of the notice of hearing and responded with evidence of her own. Despite having received the notice of hearing and having made application for an order of possession, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on March 15, 2013. A copy of the tenancy agreement was filed into evidence. The monthly rent is \$1,440.00 payable on the first day of each month.

The tenant agreed that she had advertised the availability of temporary accommodation in her rental unit, on Airbnb. In response to her advertisement the tenant found a temporary visitor and rented out a sofa bed in her apartment for the nights of October 10-15. On October 14, 2016, the landlord served the tenant with a notice to end tenancy for cause. The reason for the notice was that the tenant had assigned or sublet the rental unit without the landlord's written consent. The tenant disputed the notice in a timely manner.

The tenant testified that upon receipt of the notice to end tenancy, she deleted her profile off the website and has not had any visitors since then.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant has sublet or assigned the rental unit without the landlord's consent. *Residential Tenancy Policy Guideline#19* addresses assignments and sublets.

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the *Act* does not support a landlord/tenant relationship between the tenant and the third party.

The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

The use of the word 'sublet' can cause confusion because under the *Act* it refers to the situation where the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant.

'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the *Act*, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship.

If there is a landlord/tenant relationship, the provisions of the *Act* apply to the parties. If there is no landlord/tenant relationship, the *Act* does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

In this case the tenant rented out her sofa bed without getting the written consent of the landlord. The landlord issued a one month notice to end tenancy for the tenant's failure to obtain the landlord's written consent to "sublet". However I find that the tenant remained in the rental unit and allowed the occupants/roommates to move in on a temporary arrangement without a formal tenancy agreement. Therefore I find that the relationship between the original tenant and the temporary occupant does not constitute a landlord/tenant relationship.

Based on the above, I further find that since the tenant continued to occupy the rental unit while she rented the sofa bed to temporary occupants, this rental arrangement is not a sublet as contemplated by the *Act*. Accordingly, the notice to end tenancy is set aside and the tenancy will continue.

Since the tenant is successful in her application, I grant her the recovery of the filing fee of \$100.00. The tenant may make a one-time deduction of \$100.00 from the next rental payment.

Conclusion

The notice to end tenancy is set aside and the tenancy shall continue.

The landlord's application is dismissed.

The tenant may make a one-time deduction of \$100.00 from the next rental payment.

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: December 08, 2016

Residential Tenancy Branch