



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: AS OLC FF

Introduction:

Both parties (the landlord by agent) attended the hearing and provided sworn testimony. The landlord's agent confirmed they received the Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to section 89 of the Act. The tenant requests pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To find that the landlord is unreasonably withholding consent to sublet contrary to section 34; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord unreasonably withholding consent to sublet contrary to section 34 of the Act?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 1, 2013 on a fixed term lease to October 1, 2014 and month to month thereafter, a security deposit of \$1450 was paid and rent is now \$2985 a month. No copy of the lease is in evidence. The tenants said they never received a copy.

The landlord's agent said they were provided copies of the lease at the time. It is a standard lease but has an addendum prohibiting subletting. He said they have a policy of never allowing subletting as they do not want to be in the situation of having multiple tenants moving in and out of the property.

The tenants are relying on sections 34, 44 and 65 of the Act. They state the landlord is unreasonably withholding consent to sublet. One of their members has to leave and

they have requested consent to have another person join them. They had a fixed term lease until October 2014 and then it reverted to month to month lease. They point out that section 44(3) of the Act states that the lease in such a case is deemed to be renewed on the same terms and that I have the authority under section 65 to find the unit may be sublet as the landlord is unreasonably withholding consent.

In evidence is a letter request to the landlord and statements of the parties. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Section 34(1) of the Act provides that unless the landlord consents in writing, a tenant must not assign or sublet a rental unit. Section 34(2) provides that if a fixed term tenancy is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection 1.

I find the tenants no longer have a fixed term lease. They now have a month to month lease. Residential Policy Guideline 19 provides:

A landlord is not required to give consent if not asked to do so. Once the request is made, the landlord's consent cannot be unreasonably or arbitrarily withheld if the tenancy agreement:

- *has a fixed term of 6 months or more...*

A landlord is not required to give consent to an assignment or sublet other than those specified.

I find the Act does not require the landlord to give consent to sublet in a month to month tenancy pursuant to section 34 and this is clarified in Residential Policy Guideline 19. As explained to the parties in the hearing, it would appear the intent of the legislation is that parties who are in a fixed term lease might be relieved financially if their circumstances required them to move. Parties in a month to month tenancy may give one month's notice to end their tenancy so are not in the same situation.

In respect to their submission on section 44 of the Act, I find a fixed term lease is not renewed as a fixed term lease but is deemed to be renewed on a month to month lease. As stated, section 34 of the Act does not apply to a month to month tenancy.

I dismiss the application of the tenants.

Conclusion:

I dismiss the application of the tenants without leave to reapply. I find them not entitled to recover the filing fee due to lack of success.

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 18, 2017

Residential Tenancy Branch