



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SALCO MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, DRI, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing an additional rent increase and seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order allowing the tenant to assign or sublet because the landlord's consent has been unreasonably withheld; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call. The tenant testified that the landlord was served with the application for dispute resolution and notice of this hearing by registered mail on September 25, 2017 to the mailbox of the landlord where rent is paid, and has provided a copy of a Canada Post tracking print-out confirming that testimony. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*, and all evidence provided by the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that the landlord has unreasonably withheld consent to assign or sublet?
- Has the tenant established that the landlord has increased rent contrary to the *Residential Tenancy Act* and the regulations?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for a portion of rent and utilities that would have been paid by a roommate if the landlord had consented to a sublet?

Background and Evidence

The tenant testified that this fixed term tenancy began on January 15, 2014 and reverted to a month-to-month tenancy after 12 months, and the tenant still lives in the rental unit. Rent in the amount of \$900.00 per month was originally payable on the 1st day of each month, and the tenant paid a pro-rated amount for the first partial month. Rent was increased to \$933.00 per month effective January 1, 2017, and the tenant has been served with another Notice of Rent Increase which increases the rent to \$970.00 effective February 1, 2018. There are no rental arrears.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 as well as a pet damage deposit in the amount of \$450.00, both of which are still held in trust by the landlord. The rental unit is a 2 bedroom apartment in an apartment complex.

The tenant has lost her copy of the tenancy agreement and has asked the landlord numerous times for another copy but the landlord has refused. Copies of emails exchanged to that effect have been provided for this hearing. The tenancy has always been based on 2 people residing in the rental unit. At the time the tenancy agreement was signed, the tenant and her partner were to reside in the rental unit, however because the tenant's partner was not present, his name was not added to the tenancy agreement. The landlord stated that it could be added at a later date, which was not done, however he remained a tenant from the beginning of the tenancy until July, 2014. The tenant was successful in finding another roommate to share expenses who stayed only from July 1 to August 15, 2014. Another roommate stayed from September, 2014 to December, 2014. Both roommates had been approved by the landlord. The tenant's partner moved back into the rental unit in December, 2014, who stayed until September, 2017.

The landlord has now denied a request to sublet the second bedroom without a new contract increasing rent to \$1,100.00 per month.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$1,399.50 for rent compensation for October, November and December, 2017';
- \$24.71 for electricity compensation for October, 2017; and
- \$79.73 for electricity compensation for November and December, 2017.

The tenant's total monetary claim is \$1,503.94 in addition to recovery of the \$100.00 filing fee, and the tenant testified that those are the amounts that a roommate would

have contributed to the household expenses had the landlord not unreasonably withheld consent. A copy of an electricity bill has also been provided as evidence for this hearing.

Analysis

Firstly, with respect to rent increases, the tenant agrees that rent has not been increased contrary to the *Act*, and the tenant's application is based on a statement made by the landlord that before the landlord would agree to another person residing in the rental unit, the tenant would be required to enter into a new tenancy agreement for additional increased rent. The tenancy is now on a month-to-month basis and the tenant is not required to enter into a new tenancy agreement.

The tenant also testified that the landlord had approved previous roommates, and given that the rental unit has 2 bedrooms, I don't think the request for another sublet is unreasonable, however the *Act* specifies that a landlord may not unreasonably withhold consent if the fixed term tenancy agreement is for 6 months or more. In this case, the fixed term was for 12 months, but reverted to a month-to-month tenancy in February, 2015, and remains on a month-to-month basis.

Residential Tenancy Act:

Assignment and subletting

- 34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

The tenancy began as a fixed term of more than 6 months, but no longer is a fixed term of 6 months or more. Therefore, I cannot order the landlord to allow a sublet.

Conclusion

For the reasons set out above, the tenant's application is hereby 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: November 23, 2017

Residential Tenancy Branch