



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: AS, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that he be allowed to assign or sublet his rental unit as the landlord has unreasonably withheld its permission.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord testified the tenant failed to serve him with the Application for Dispute Resolution and Notice to Dispute Resolution Hearing. The landlord included an address of service on the tenancy agreement that failed to include a specific unit. The tenant sent the Application for Dispute Resolution and Notice of Dispute Resolution Hearing to the address on the tenancy agreement by registered mail on August 10, 2018. The documents were returned. I determined the Tenant has sufficiently served the landlord. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that he be allowed to assign or sublet his rental unit as the landlord has unreasonably withheld its permission?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would begin on March 1, 2018, end on February 28, 2019 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1500 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$750 at the start of the tenancy.

The tenant testified he was relocating to another city. On August 4, 2018 the tenant sent a letter to the landlord requesting that he be permitted to assign the remainder of the fixed term.

The landlord responded in an e-mail dated August 4, 2018 stating his assign was in process but due to the long weekend and their lawyer's schedule the process may take longer than the deadline mention in his letter. It also requested an exact date of move-out and a Notice that the tenant was ending his tenancy.

The landlord was provided with a completed Prospective Tenant Application Form from HL dated August 4, 2018.

On August 6, 2018 the tenant sent an e-mail to the landlord indicating he was prepared to move-out contingent on the successful assignment to HL. It further provided that the landlord had to approve her by August 9, 2018 and he would move out on that date.

On August 8, 2018 the landlord e-mail the Tenant advising him that they had not accepted HL but had accepted another applicant who was scheduled to move in on August 18, 2018.

The tenant responded saying he was not prepared to agree as there was not agreement in place that the new tenant would reimburse the tenant for the proportionate share of the rent.

The tenant vacated the rental unit on August 15, 2018. The new tenant reimbursed the tenant for the rent he previously paid for the period August 15, 2018 to August 31, 2018.

The landlord testified the owner rejected the application of HL. The owner did not provide reasons but stated he assumed it was because the owner thought HL might have difficulties in paying the rent. The application form of HL states she was earning \$2600 a month as a manager/server and an additional \$1000 writing a freelance blog for a total of \$3600.

Law

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 has 6 months or more remaining in the term, 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.

Policy Guideline #19 includes the following:

Residential Tenancy Act

Under s. 34 of the Residential Tenancy Act, a tenant must not assign a tenancy agreement unless the landlord consents in writing. A landlord must not unreasonably withhold consent if the tenancy agreement has six months or more remaining in the fixed term. (By implication a landlord has the discretion to withhold consent, without regard to reasonableness, in the case of a fixed term tenancy agreement with less than six months remaining). The Act does not specifically refer to month-to-month (periodic) tenancies.

An arbitrator may find that a landlord has acted reasonably for withholding consent to assign a periodic tenancy, unless the tenant can demonstrate a compelling reason why the landlord should agree to the assignment. The circumstances of each case would have to be examined.

In either a fixed-term or a periodic tenancy, failure to obtain the landlord's written consent prior to the assignment could result in the landlord serving a One Month Notice to End Tenancy (form RTB-33).

Failure of a landlord to accept a reasonable assignment may interfere with the landlord's ability to claim for loss of rental income as it may be found that the landlord failed to mitigate that loss.

An assignment may take place in various circumstances, such as a tenant leaving town, but still having a period of time left on a fixed-term tenancy agreement. The original tenant may wish to assign the tenancy agreement to a new tenant who takes over the tenancy agreement for the remainder of the term.

Analysis

The matter is moot as the rental unit has been assigned to another tenant and the tenant has moved. The tenant was reimbursed for the ½ of a month rent for August 2018. It is not be appropriate to make an order that the landlord agree to the assignment of the lease as that matter has been dealt with.

Further, I determined the Tenant failed to prove that the landlord unreasonably withheld its consent to the assignment of the lease to the prospective tenant proposed by the Tenant. The letter requesting the assignment was not sent to the landlord by the Tenant until Saturday, August 4, 2018. The completed Prospective Tenant Application Form is dated August 4, 2018. The landlord responded on August 4, 2018 advising the tenant they are processing the application but that it is not likely they could complete the process within the dates demanded by the tenant as it was the long weekend. The tenant made a second request which was signed on Monday, August 6, 2018. The landlord responded on August 8, 2018 advising that they did not accept the tenant proposed by the Tenant but they accepted another Tenant who moved in on August 15, 2018.

I determined the landlord acted reasonably in considering the prospective tenant offered by the applicant. The applicant was given a response in 4 days which is not unreasonable given the long weekend. Further the assignment to the prospective Tenant offered by the Applicant would require the prospective Tenant to pay 41% of her income in rent (Income of \$3600 divided by rent of \$1500 = 41%). I determined the landlord did not unreasonably withhold its consent.

Finally the Applicant was advised that the landlord found a new Tenant on August 8, 2018. The Applicant has not suffered a loss.

Conclusion:

I dismissed the Tenant's application for an order that the Tenant be allowed to assign or sublet the rental unit as the landlord has unreasonably withheld its consent. I also dismissed the application to recover the cost of the filing fee as the Applicant has not been successful.

This decision is final and binding on the parties.

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: September 21, 2018

Residential Tenancy Branch