



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order allowing the tenants to assign the tenancy agreement or sublet the rental unit because the landlords' consent has been unreasonably withheld.

The tenants and one of the landlords attended the hearing, and the landlord also represented the other landlord. The landlord and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Should the tenants be allowed to assign the tenancy agreement or sublet the rental unit?

Background and Evidence

The tenant testified that this fixed term tenancy began on May 1, 2017 and expires on April 30, 2022 thereafter reverting to a month-to-month tenancy, and the tenants still occupy the rental unit. Rent in the amount of \$4,695.00 per month was originally payable under the tenancy agreement, which has been increased and is now \$4,700.00 per month, payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$2,347.50 as well as a pet damage deposit in the amount of \$2,347.50, both of which are still held in trust by the landlords. The rental unit is a 5 bedroom house in a

semi-rural area, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the landlords have been unreasonable by withholding permission to assign or sublet. Further correspondence from the landlords amends the contract by saying that the tenants can sublet with conditions. It then says an assignment can only be through the landlords. The relationship is untenable between the parties due to language used, and how the tenants have been treated.

The original tenancy agreement has promises in an Addendum that have never been met. Deck repair was to be expedited and is still not done. The grounds were to be cleared prior to the tenancy and it took 14 months for the landlords to complete that, and the tenants were accused of not caring for the garden. There has been no painting done in the last 3 years. Contractors sent by the landlords expect access to get to the deck, and each time, the landlords send someone for a fruitless inspection; no work has been done. The tenants' right to quiet enjoyment has been infringed on by numerous inspections and contractors, and a document setting out those events has been provided by the tenants in their evidentiary material.

The tenant testified that the property is ready for a sublet; the only thing standing in the way is the landlords' failure to complete painting the house, and other repairs mentioned in the tenancy agreement. The tenants want the contract to be terminated for breach of a material term.

The landlord testified that the fixed term was made at the tenants' instigation. The landlords have only asked that any sublet or assignment be in the same terms as the original tenancy agreement. The landlord offered to assign so that the tenants didn't have to be landlords, and tried to work with them so they could move. However, the landlords feel intimidated by the tenants by requesting that the landlords complete a Mutual Agreement to End Tenancy. The landlord has asked what the problem is, and the tenants have refused to answer or have any dialogue and there is no indication of why the tenants want to end the tenancy. Further, the landlord does not know how the painting or lack thereof would affect a sublet.

The landlord has written to the tenants twice about assignment or sublet, and tried to work with them. The tenants lived in the rental unit for 13 months without any issues brought to the landlords' attention or of the property manager, nor have they heard of any maintenance issues.

The landlords sent a letter to the tenants, a copy of which has been provided as evidence for this hearing dated July 12, 2018. It states that the landlords have now

discovered that the landlords cannot unreasonably withhold consent for the tenants to sublet if 6 months or more remains on the fixed term contract, and that the sublet contract must be in the same terms respecting such terms as pets and the number of persons living in the home, and that the sublet must be for the remainder of the fixed term period. It also states: "You will remain responsible as our tenants for the remaining period of the fixed term tenancy and the property should not be left empty at any time. It is imperative that any tenant you sublet the property to undergo a rigorous reference check, as you would be held liable for any damage to the property."

Another undated letter from the landlord to the tenants offers to mutually agree to end the tenancy once the landlords have re-rented, and that the landlords would advertise and assign the contract.

Analysis

The tenants' application seeks an order that the tenants be permitted to sublet or assign because the landlords' consent has been unreasonably withheld. Since the application was made, the landlords obtained information from the Residential Tenancy Branch that because there is more than 6 months remaining on the fixed term, the landlords cannot unreasonably withhold consent, but require the same terms of the contract, such as with respect to pets and maintaining the property.

An assignment permanently transfers a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord for the remainder of the fixed term.

A sublet is different. The original tenancy agreement remains in place, and a new sublease is created wherein the tenant becomes the landlord of the sub-tenant and the original tenant remains the tenant of the original landlord.

Since the tenants' application was made, the tenants have now asked that the tenancy be ended for breach of a material term, and have provided the landlords with a notice to end the tenancy effective August 31, 2018 for "frustration" or breach of a material term.

I refer to Residential Tenancy Policy Guideline 34 – Frustration, which states, in part: "A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract." In this case, there has been no event that has changed the circumstances rendering the contract unable to be fulfilled. The tenants wish to end the

tenancy because the tenants allege that the landlords have failed to fulfill the obligations of the tenancy agreement resulting in an infringement on the tenants' right to quiet enjoyment. That is not a frustrated agreement, and that is not the application before me.

The application that is before me is for an order that the landlords permit the tenants to assign or sublet. Since the fixed term tenancy is longer than 6 months, the landlords agree, and I so order.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that amount and order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, I hereby order that the tenants be permitted to assign the tenancy agreement in the same terms as the original tenancy agreement, or sublet as described above.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 13, 2018

Residential Tenancy Branch