



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS FF LRE OLC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to allow assignment of the tenancy agreement pursuant to section 65 of the *Act*;
- to suspend or set condition’s on the landlord’s right to enter the rental unit;
- directing the landlord to comply with the *Act* pursuant to section 62; and
- for a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord appeared at the hearing. The landlord was represented at the hearing by agent B.S. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

Both parties confirmed receipt of each other’s evidentiary packages and the landlord confirmed receipt of the tenant’s application for dispute. All parties around found to have been duly served in accordance with the *Act*.

Issue(s) to be Decided

Should the tenant be allowed to sublet the rental unit?

Should conditions be placed on the landlord’s right to enter the rental unit?

Should the landlord be directed to comply with the *Act*?

Can the tenant recover the filing fee?

Background and Evidence

Testimony provided by both parties confirmed this tenancy began in August 2016. Rent is \$1,835.00 per month and a security deposit of \$850.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant said he was seeking an Order directing the landlord to comply with the *Act* and to allow him to sublet the rental unit for December 2018, January 2019 and potentially February 2019. In addition to an application allowing him to sublet his rental

unit, the tenant sought clarification on whether the *Act* applied to the rental unit because a provision in the tenancy agreement signed by the parties stated as follows:

It is a City of Vancouver development bylaw requirement that your premises be used for the production of Art. The tenant acknowledges that by definition, this tenancy is excluded under the Residential Tenancy Act as a “residential premises”.

The tenant explained he had previously been permitted to sublet the rental unit and wished to have the landlord directed to allow him to do so. The tenant said he was unable to simultaneously travel for work and to continue to afford rental payments. It was for this reason that he sought a short term sublet.

The landlord argued that no sublets were permitted by the tenancy agreement signed by the parties and the landlord said no exceptions could be made out of fear that multiple persons in the building would then seek such an order. They acknowledged the tenant had previously been granted permission to sublet the suite but said this was a “one-time” event which would not be repeated. The landlord stated that despite the wording of the tenancy agreement, it was her understanding there was “no question” that the *Act* did apply to the tenancy in question.

Analysis

Section 34 of the *Act* states as follows:

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 has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

This issue is explored in detail by *Residential Tenancy Policy Guideline #19* which notes, “A tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the landlord. If a tenant assigns or sublets without obtaining the landlord’s prior written consent, the landlord has cause to serve a One Month Notice to End Tenancy under the Legislation.” This *Guideline* continues by saying, “It is up to the original tenant to seek the landlord’s consent. In the case of a fixed term tenancy agreement under the *Residential Tenancy Act*, the landlord cannot unreasonably withhold consent if there are six months or more remaining in the term.”

After reviewing the *Act* and having considered the appropriate *Policy Guidelines*, I find the landlord is under no obligation to allow the tenant to sublet the rental unit. While the

unit was previously rented under a fixed-term tenancy agreement, the tenancy evolved into a periodic, month-to-month tenancy when the tenant remained in the premises after the fixed-term ended. This evolution into a periodic tenancy changed the nature of the tenancy and removed any obligation the landlord had, allowing a tenant to sublet their rental unit. For these reasons, the tenant's application directing the landlord to comply with the *Act* and to allow a sublet is dismissed.

The landlord acknowledged during the hearing that the *Residential Tenancy Act* was applicable to the tenancy in question; therefore, the tenant's request for clarification on this matter is moot. As the tenancy is governed by the *Act*, the landlord need not consent to subletting because the tenancy is no longer for a fixed-term.

As the tenant was able to establish the *Act* applied to his tenancy, he was therefore partially successful in his application, and may recover a partial amount of the filing fee. Pursuant to section 72 of the *Act*, the tenant may withhold \$50.00 from a future rent payment on **ONE** occasion.

Conclusion

The tenant's application for an Order allowing him to sublet the rental unit is dismissed without leave to reapply.

The tenant may withhold \$50.00 from a future rent payment on **ONE** occasion in partial satisfaction for a return of the filing fee.

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 20, 2018

Residential Tenancy Branch