



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKIMA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated December 12, 2018. The Notice alleges that the tenant has assigned or sublet his tenancy without the landlord's written consent. He also seeks a compliance order relating to occupancy of the rental unit.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant assigned or sublet his tenancy?

Background and Evidence

The rental unit is a two bedroom apartment in a three storey apartment building. There is a written tenancy agreement. The tenancy started February 1, 2016. The rent is currently \$1300.00 per month. The landlord holds a \$600.00 security deposit.

It is agreed that others, two girls and a second man, are living in the apartment and paying the tenant money for their accommodation. It is agreed that the tenant is still living there, perhaps sleeping on couch. The parties share the kitchen and the single bathroom. It would appear that the tenant is actually receiving more money from the three than what he is paying for rent.

Analysis

Residential Tenancy Policy Guideline 19, “Assignment and Sublet” provides:

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

In this case, as the tenant continues to live in the rental unit, his co-occupants are roommates. He has not assigned nor sublet the rental unit to any of them.

As a result, the Notice to End Tenancy must be dismissed.

Conclusion

The application is allowed. The Notice is dismissed. The tenant paid no 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: January 14, 2019

Residential Tenancy Branch