



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

The Tenant stated that on February 01, 2019 she personally served the Landlord with the Application for Dispute Resolution and the Notice of Hearing. The Landlord acknowledged receipt of these documents.

On January 31, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on February 25, 2019. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On February 28, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Tenant. As this evidence was not served to the Tenant it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of a portion of the security deposit?

Should the Tenant be granted authority to assign the tenancy?

Is there a need to set conditions on the Landlord's right to enter the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that:

- the parties entered into a fixed term tenancy, the fixed term of which ended on January 01, 2020;
- the Tenant agreed to pay \$550.00 in rent by the first day of each month
- the Tenant paid a security deposit of \$550.00 was paid;
- the Tenant paid \$275.00 in rent for February of 2019;
- the Tenant told the Landlord to apply the overpayment of her security deposit toward rent for February of 2019;
- on January 12, 2019 the Tenant told the Landlord she did not want to continue living in the rental unit;
- the Tenant told the Landlord that she would like to find someone to rent the unit; and
- the Landlord agreed to the proposal for the Tenant to find a new tenant.

The Tenant stated that she found a potential tenant for the unit; when the potential tenant met the Landlord he told her the rent would be \$650.00; and that the potential tenant then decided not to move into the unit.

The Landlord stated that when the Landlord met the potential tenant she told him that she wanted to rent a different room in the complex; the room she wanted to occupy rents for \$650.00 per month; and the potential tenant decided not to move into the unit as she did not want to pay \$650.00 for the more expensive unit.

The Tenant stated that since she introduced the last potential tenant to the Landlord he has informed her that he does not want her to rent out the unit.

At the hearing the Landlord stated that he is willing to allow the Tenant to find a new tenant for the unit, providing he has the ability to approve of the new tenant. He stated that he understands that he can only refuse to approve a new tenant if he has reasonable grounds to do so.

Analysis:

Section 19(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. On the

basis of the undisputed evidence I find that the Landlord collected \$275.00 more for the security deposit than he was entitled to collect.

Section 19(2) of the *Act* stipulates that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment. On the basis of the undisputed evidence I find that the Tenant applied the \$275.00 security deposit overpayment to rent that was due on February 01, 2019. As the Tenant has recovered the overpayment, I find that I do not need to consider the Tenant's application to recover the overpayment.

Section 34(1) of the *Act* stipulates that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

Section 34(2) of the *Act* stipulates that 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 section 34(1) of the *Act*.

Pursuant to section 34 of the *Act* I hereby Order that the Landlord must give the Tenant written consent to assign or sublet the rental unit, for \$550.00 per month, provided:

- the Tenant introduces the person who intends to occupy the rental unit to the Landlord;
- the person who intends to occupy the rental unit provides the Landlord with information that is reasonably necessary for the Landlord to determine whether the person would be a suitable occupant;
- the Landlord has no reasonable reason for not wanting that person to occupy the rental unit; and
- there are at least six months remaining in the fixed term tenancy.

For the duration of this tenancy I hereby Order the Landlord to strictly comply with section 29(1) of the *Act*, which reads:

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Conclusion:

The Landlord is obligated to comply with the Orders outlined in my analysis.

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: March 14, 2019

Residential Tenancy Branch