



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, AS, OLC, MNDC, FFT

Introduction

On May 25, 2019, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- an order for the Landlord to make emergency repairs to the rental unit.
- for an order that the Landlord to comply with the *Residential Tenancy Act* (the Act), regulations, or tenancy agreement.
- To allow the Tenant to assign or sublet the rental unit.

On June 4, 2019, the Tenants amended their application to include a request for a monetary order for money owed or compensation for damage or loss.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants testified that they received a One Month Notice To End Tenancy For Cause from the Landlord. The Tenants testified that there is ongoing conflict with the Landlords so they decided to move out of the rental unit on June 30, 2019; the effective

date of the One Month Notice. The Tenants submitted that they feel they were illegally evicted.

Since the Tenants have moved out of the rental unit I find that the tenancy has ended effective June 30, 2019. I find that there is no need to hear and consider the Tenants' claims for emergency repairs, permission to assign or sublet, and for an order that the Landlord comply with the Act, regulation, or tenancy agreement.

The hearing proceeded on the Tenants' remaining claim requesting a monetary order for money owed or compensation for damage or loss.

Issues to be Decided

- Are the Tenants entitled to compensation for damage or loss?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 1, 2018, as a one year fixed term tenancy. Rent in the amount of \$1,250.00 was due to be paid to the Landlords by the first day of each month. A security deposit of \$625.00 was paid by the Tenants to the Landlords. The Tenants moved out of the rental unit on June 30, 2019, after receiving a One Month Notice To End Tenancy For Cause dated May 27, 2019. They testified that they were feeling threatened.

Compensation for Damage or Loss

The Tenants provided a monetary order worksheet indicating they are seeking compensation in the amount of \$5,625.00. The Tenants are looking to be compensated for nine months of lost rental income due to their allegation that the Landlords refused them permission to rent out a bedroom within the rental unit. The Tenants claim is for a loss of \$625.00 per month.

The Tenants testified that on February 26, 2019, they requested that the Landlord permit them to rent out a room to an additional occupant. They testified that the Landlord refused. The Tenants testified that the reason provided by the Landlord was related to septic tank capacity.

The Tenants testified that the rental unit is a two bedroom unit and they believed they were permitted to rent out the spare room. They testified that the tenancy agreement is

in both their names and does not state they cannot rent out a room. They testified that they needed the rental income.

The Tenants testified that after the Landlord refused to let them rent out the room they waited until May 25, 2019, to apply for dispute resolution because they did not want any conflict with the Landlord.

The Tenants testified that the claim for nine months of lost rental income is for the remaining time of the fixed term tenancy agreement that ends on November 30, 2019.

In reply, the Landlords confirmed that the Tenants requested to have a roommate and that the Landlords refused. The Landlord testified that the tenancy agreement addendum contains a term that provides that only tenants / vehicles named on agreement may occupy the rental unit. The agreement provides that additional occupancies or vehicles need prior written permission from Landlord in order to occupy residence. The Landlord provided a copy of the tenancy agreement and addendum.

The Landlords testified that on March 6, 2019, they informed the Tenants they could not have an additional occupant in the rental unit. The Landlord testified that there are eight separate rental units on the property, and the Landlord wants to keep the number of occupants low and manageable.

The Landlord testified that when the parties discussed entering into the tenancy, the Tenants never mentioned that they wanted to augment their income by renting out the spare room. The Landlord submitted that the issue of a roommate never came up.

Analysis

Residential Tenancy Policy Guideline #19 Assignment and Sublet is intended to help the parties to an application understand issues that are likely to be relevant and what information or evidence is likely to assist them in supporting their position. The Guideline provides an explanation of Assignment, Subletting and Occupants/Roommates.

Assignment

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. Under section 34 of the Act, a Tenant must not assign a tenancy agreement unless the Landlord consents in writing.

Subletting

A Tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the Landlord.

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant.

Occupants/Roommates

The Guideline provides:

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.

Compensation

Section 7 of the Act provides,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

The Tenants were seeking to rent a spare room to another occupant or roommate. The request is not related to a request to sublet or assign the tenancy.

I find that the tenancy agreement only contains the names of the two Tenants. I find that the tenancy agreement specifically addresses the situation where a Tenant wants to add an occupant / roommate. I find that the Tenants required written permission from the Landlord. The Tenants requested permission and the Landlord refused.

I find that the Landlord has the right to decide whether or not to permit an additional occupant in the rental unit. There is no provision in the Act that requires the Landlord to allow an additional occupant and there is no provision in the Act that states that consent cannot be unreasonably withheld by the Landlord. The provision that consent cannot be unreasonably withheld only applies to requests to sublet, where the Tenant moves out of the unit, and when there is six months or more remaining in the term.

I find that the Landlord was entitled to refuse permission for the Tenants to rent out the extra bedroom. I find that the Landlords did not breach the Act, Regulation, or tenancy agreement.

Since the Landlords did not breach the Act, Regulation, or tenancy agreement, the Landlords are not obligated to compensate the Tenants for any loss.

The Tenants claim for compensation for a loss of rental income due to the Landlords refusal to permit an additional occupant is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were not successful with their application, I decline the recovery of the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Conclusion

The Tenant's application is dismissed in its entirety. I find that the Landlord is not obligated to permit the Tenants to rent out the extra bedroom. I find that the Landlords did not breach the Act, Regulation, or tenancy agreement.

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: July 17, 2019

Residential Tenancy Branch