



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, FFT

Introduction

The tenant filed an Application for Dispute Resolution on July 30, 2020 for an order that they be allowed to assign or sublet. Additionally, they applied for reimbursement of the application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on September 4, 2020.

Both parties attended the hearing, with each party confirming they received the evidence prepared by the other. With both parties ready to proceed by speaking to the issues, I proceeded with the hearing at the scheduled time.

Issue(s) to be Decided

Is the tenant entitled to an Order allowing an assignment or sublet when permission has been unreasonably denied, pursuant to section 65(1) of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee pursuant to section 72 of the *Act*?

Background and Evidence

Both parties agreed on the terms of the tenancy agreement in place. The tenant provided a copy of this agreement for the hearing. Both parties signed the agreement on February 5, 2020. The tenancy started on February 27, 2020 for a fixed term ending

on July 31, 2021. The monthly rent is \$4,300.00 per month payable on the first day of each month. The tenant paid a security deposit of \$2,150.00 on February 5, 2020.

The parties signed an addendum to the agreement on February 5, 2020. Clause 5 of the Addendum states: "Sublet or Airbnb are not allowed."

The tenant presented in the hearing that their circumstances in 2020 had changed after the start of the tenancy, when public health restrictions led to the cancellation of their home business plans. Their initial design for the rental unit when starting the tenancy was to use part of the space for residential and part for a daycare space. Because the public health restriction interrupted their business plan, the landlord was "struggling". They opted to have a student live-in, with enough space and extra room as needed. In the hearing, they referred to the space area and number of bedrooms.

The tenant gave their understanding of the term "sublet". This is "making a secondary lease agreement, to rent whole or part of property to someone." In their definition, the tenant is "not living there" when they are subletting the unit to another.

The tenant made their initial request to the landlord on July 29, 2020. Their initial request was through text message, a copy of which they provided in their evidence. Initially the landlord asked specific questions on the logistics. The landlord then refused: "If you do second business in the property without landlord's permission, it may cause a termination of our agreement."

On July 29 the tenant then attached a letter to an email, again making their request with more detail. In this letter, the tenant referred to the *Act* section 34. On July 30, the landlord replied by email: "Please check out Residential Tenancy Agreement Addendum term 5 . . . Please follow our Agreement."

For the hearing, the landlord prepared a document that sets out their "reasons for no sublet". This is reference to the addendum, and their question on where the extra room would be available in the unit. The landlord restated these points in the hearing.

The landlord gave their understanding of the term "sublet". This is where a tenant "rents out part of the house to a third person when still living there". In their estimation this is the situation here, where "the tenant wants to rent out one room, and they manage".

Analysis

The *Act* section 34 provides the following:

- (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).

The *Act* section 65(1) sets out the following:

. . . if the director finds that a landlord or tenant has not complied with the Act, the regulations or the tenancy agreement, the director may make any of the following orders:

. . .

(g) that . . . a rental unit may be sublet if the landlord's consent has been unreasonably withheld contrary to section 34(2)

The Residential Tenancy Policy Guidelines are in place to help parties to an application understand issues likely to be relevant. Guideline 19 'Assignment and Sublet' gives a statement of the policy intent of the legislation. It describes:

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement.

Further:

'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.

The guideline sets out two understandings of the word 'sublet'. These are exactly the viewpoints expressed by either party in this hearing. The tenant proposes to rent out space within the unit to a student. This is not a sublet; therefore, what the tenant seeks is not prevented by the Addendum. The tenant is not requesting to sublet the unit. They are neither proposing to move out of the unit, nor will they grant exclusive occupancy to a subtenant.

Although the tenant made a written request to "sublet my tenancy", in their request to the landlord, they similarly mis-applied the term 'sublet'. They are seeking to rent out

space within the unit to others. Under the *Act*, this is not a sublet, and their request is not prevented by reason of the Addendum to the tenancy agreement here.

In sum, I find the tenant is allowed to rent out space within the unit to others. This is not a 'sublet', and the tenancy agreement does not prevent them from renting the space out. Whichever way the tenant chooses to arrange the rooms within the unit is their own individual choice, and there is nothing in the tenancy agreement preventing them from making the adjustments to do so.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

The tenant is allowed to rent out space in the unit to others. The Addendum in the tenancy agreement does not bar them from doing so.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 16 2020

Residential Tenancy Branch