



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GLR PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order permitting the tenant to assign or sublet the rental unit because the landlords' permission has been unreasonably withheld, and to recover the filing fee from the landlords for the cost of the application.

The tenant and the individually named landlord attended the hearing and the landlord also represented the landlord company. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established that the landlords' consent to assign or sublet has been unreasonably withheld contrary to the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that this fixed-term tenancy began on March 1, 2022 and reverts to a month-to-month tenancy after February 28, 2023, and the tenant still resides in the rental unit. Rent in the amount of \$1,350.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$675.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the top floor of a complex.

The tenant has been offered a year of study in Japan, and asked the landlord by text message about subletting, but the landlord said immediately to move out. The tenant asked why the landlord was withholding consent, and the landlord said he could check the person, but later declined. The tenant contacted the landlord company and received the same information; no one is allowed a sublet or sublease even if it's legal, and to move out.

The sublet will be for less than a year; the tenant will return in mid-July or August. The tenant has provided a Roommate Agreement for this hearing, stating that the sublease is less than a year, and the earliest to end it would be in June. It was made on September 29, 2022 to commence on October 1, 2022 and expire on July 31, 2023 thereafter reverting to a month-to-month tenancy. It states rent is \$2,150.00 payable on the 1st day of each month with a \$1,075.00 security deposit.

There were issues prior, such as a rat in the rental unit and the landlord blamed the tenant. A hole was found and it was a hassle to get the landlord to repair it, until the tenant threatened to stop paying rent. It's a constant battle to get anything done, and the landlords simply constantly tell the tenant to leave. Communication with the landlord (PB) is hostile and the tenant is scared to ask for repairs. The leaky pipe was not the tenant's fault either, and the plumber said it was poorly done initially which caused the leakage.

The tenant testified that the landlords' continuous responses about moving out reflect the landlords' unreasonableness respecting consent to sublet.

The landlord testified that sometimes sublets are drug addicts or cause damage.

The rental complex is affordable housing, and the tenant pays \$1,350.00 per month and charges \$2,150.00 in the Roommate Agreement, making a profit. That is not good for the landlord company. The tenant is not part of the company and should not make a profit from the landlord company. It's a studio apartment.

When asked why it is that the rent is an issue considering the rental unit would be sublet fully furnished, the landlord replied that making a business from the landlord's company that the tenant is not a part of is not permitted; that's it.

Analysis

In this case, the tenant seeks to sublet the rental unit while in Japan studying. The *Residential Tenancy Act* states:

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

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

In this case the fixed term tenancy agreement expires on February 28, 2023, and the tenant made the Application for Dispute Resolution on July 26, 2022, which is slightly more than 6 months. The landlord withheld consent testifying that sometimes subtenants are drug addicts or cause damage, but that's the case with tenants as well, and I find that to be unreasonable.

I refer to Residential Tenancy Policy Guideline 19 – Assignment and Sublet which states, in part (underlining added):

“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). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. 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. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

“Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to

be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.

I have also reviewed the Roommate Agreement which does specify that the sublease commences on October 1, 2022 and expires on July 31, 2023 then reverts to a month-to-month tenancy. I find that some of the terms are not enforceable under the *Act*, such as forfeiting the security deposit and an extra monthly charge for a pet. However the original tenancy agreement reverts to a month to-month tenancy as well.

The landlord also testified that the tenant is charging more money for rent than the tenant pays for rent, by about \$400.00 each month. The tenant's position is that the rent is more because the tenant provides it fully furnished. The landlord also testified that the tenant is earning an income using the landlord company which is not good for the company. The landlord testified that the rental building is affordable housing in the City, and that is not disputed by the tenant.

There are no guidelines with respect to what is reasonable. However, although it may not have been verbalized to the tenant prior to the hearing, I am not satisfied that the landlord has withheld consent unreasonably, and the tenant is taking advantage of the affordable housing situation in order to earn some income while away at school, using the landlord company to do so. I dismiss the tenant's application.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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: October 14, 2022

Residential Tenancy Branch