



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, OLC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 65(1)(g) that the tenancy agreement be assigned or sublet due to consent being unreasonably withheld contrary to s. 34(2);
- an order pursuant to s. 62(3) that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- return of his filing fee pursuant to s. 72.

R.W. appeared as the Tenant. B.D. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Should the tenancy agreement be assigned or sublet?
- 2) Should the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement?
- 3) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The tenancy began on July 1, 2020.
- Rent of \$1,625.00 is due on the first day of each month.
- A security deposit and pet damage deposit of \$800.00 each was paid to the Landlord.

A copy of the tenancy agreement and its addendum was provided by the parties. The Tenant advises that the rental unit has three bedrooms and that there is another suite below his at the property.

The Tenant advises that when the tenancy began, his partner was listed as a co-tenant. He further advises that he and his partner broke up and that she moved out. He says he has lived in the rental unit by himself since that time. The Tenant testified that he sought to have his nephew move into the rental unit after his partner moved out but that the Landlord denied the request. The Tenant says that he left the issue rest but again requested from the Landlord that an additional occupant move into the rental unit, which was again denied.

The Tenant's application provides the following description of his claim:

Applicant's dispute description

I first moved in my fiancée and I were living together. We split up earlier this year and she moved out. I then requested if I could have a friend or even family member rent a room (three bedroom place) and was denied without probable cause. At that time I left it alone. Now I have a good friend going through a separation that's looking for a place to live during his tough time and I'd like to open one of my spare rooms to him. Landlord denied that request and wants to raise rent to allow it.

The Tenant confirmed that he does not wish to move out of the property and only seeks authorization for a roommate. The Tenant further confirmed that he can afford to pay rent on his own but having a roommate would lessen his rental costs.

The Landlord emphasized that he and the Tenant signed an updated tenancy agreement when his partner moved out, including its addendum. I was directed to the tenancy agreement addendum, specifically clause 3, which states the following:

3) Written notice to the landlord should be provided before Renting/subleasing to others and written acceptance from the landlord.

The Landlord says that the community in which the rental unit is located is notorious for having bad tenants. The Landlord says that he is very careful in selecting his tenants and that he has been fortunate in that he has good tenants in both rental units for the residential property.

The Tenant queried whether the circumstances would be the same if he found a new partner. The Landlord argued they would have to sign a new tenancy agreement.

At the hearing, the Tenant confirmed that his claim that the Landlord comply is a replication of his request that the Landlord permit the tenancy agreement be assigned or sublet.

Analysis

The Tenant seeks an order that the tenancy agreement be assigned or sublet. As this is the Tenant's application, he bears the burden of proving it on a balance of probabilities.

Section 34 of the *Act* states the following with respect to assignment and subletting:

Assignment and subletting

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.

It is important to consider the purpose of the *Act*, which provides certain procedural rights to tenants in residential tenancies that do not exist at common law. By way of some context, at common law a tenant that attempts to end a fixed-term tenancy before the end of the term may be liable for rent owing to the landlord for the remainder of the term as well as any costs associated with obtaining a new tenant. In residential tenancies, a tenant may be liable for rent owed for the remainder of the term. However, s. 34(2) of the *Act* is intended to provide an escape route for tenants should the term of the tenancy exceed 6 months so that they are not on the hook for the rent owing for the remainder of the term. If they find someone else that's willing to take over the tenancy agreement, the landlord cannot unreasonably deny the assignment or sublet. No such procedural right exists at common law.

This highlights one of the primary issues in this application: the Tenant is not looking to assign or sublet the rental unit. He is merely looking for a roommate to help a friend and to reduce the cost of his rent. Policy Guideline #19 provides guidance with respect to assignment and subletting of rentals and provides the following definitions:

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.

...

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.

There is no request for an assignment or a sublease, just a request for an additional occupant. Arguably, this deals with the Tenant's application on its own as s. 34(2) of the *Act* has not been triggered. I would further note that tenancy is on a month-to-month

basis as per the tenancy agreement provided to me by the parties, which further reinforces that s. 34(2) of the *Act* has not been triggered.

However, to provide clarity to the parties in this matter I would add that there is no general prohibition under the *Act* preventing a tenant from having additional occupants in a rental unit, provided the number is not unreasonable, which may trigger the landlord issuing a notice to end tenancy under s. 47(1)(c) of the *Act*. However, that is only true in the absence of any indication to the contrary in the tenancy agreement. This can be seen by reference to s. 13(2)(f)(iv) of the *Act*, which permits landlords in the tenancy agreement to vary rent by a certain amount should the number of occupants change, and s. 47(1)(h), which permits a landlord to end a tenancy for breach of a material term of the tenancy agreement by the tenant. This point is also made in Policy Guideline #19 at pages 6 and 7.

Here, clause 3 of the tenancy agreement specifically contemplates additional occupants, which requires a written request from the Tenant and written consent from the Landlord. By signing the tenancy agreement, the Tenant demonstrated his assent to the tenancy agreement and the addendum. Though clause 3 uses the inartful wording “Renting/subleasing”, which has a different legal meaning, I interpret the clause as a prohibition of additional occupants without the Landlord’s written consent. The Landlord’s rationale for clause 3 is entirely reasonable. He wants to be assured he has good tenants and occupants at the rental unit and the best way he can do that it is to specifically consent to them moving in. The Landlord is under no obligation to permit additional the additional occupants.

Accordingly, the Tenant’s application is dismissed.

Conclusion

The Tenant’s application is dismissed without leave to reapply.

As the Tenant was unsuccessful in his application, I find he is not entitled to the return of his filing fee. His claim under s. 72 of the *Act* is dismissed 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: November 10, 2022

Residential Tenancy Branch