



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS FFT OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order allowing the tenants to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing, which started at 11:00 a.m., and ended at 11:26 a.m. Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

Preliminary Issue – Are there reasonable grounds for the application?

At the outset of the hearing, the issues laid out in this application were confirmed with the tenant. The tenant confirmed that they were still residing at the rental unit, and that this application does not pertain to a sublet or assignment situation as the terms are contemplated by the legislation.

Although the term "sublet" is used by the tenants in this dispute, I must note that RTB Policy Guideline #19 clearly provides the definition of a "sublet" and "assignment".

B. 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.

When either a manufactured home park tenancy or a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment. It is possible that the original tenant may be liable to the landlord under the original agreement.

C. SUBLETTING

Sublets as contemplated by the Residential Tenancy Act

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.

By the above definition the tenants' application references an assignment, which does not fall under the definition of sublet or assignment as defined by RTB Policy Guideline #19.

The tenant testified that although there is a tenancy agreement that has been in place since 2006, the landlords have provided subsequent permissions for the tenant to rent out space in the home as short term vacation rentals and homestays. The tenant in possession of a letter dated August 27, 2018 stating that the landlord gives consent for the tenant to have short term rentals in this residence.

The tenant states that the landlord interfered with their ability to rent out the home for short term rentals by contacting the municipality's licensing office. The tenant submitted a letter from the municipality informing them that they require a letter of authorization from the landlord for a short-term rental. At the current time, the tenant confirmed that they have suspended any short term rentals. Both parties also confirmed that the

landlord has not served the tenants with any Notices to End Tenancy for Cause. The tenant felt that a hearing was still necessary for an order that would enable them to rent their home for short-term rentals.

Residential Tenancy Policy Guideline #19 addresses circumstances where a tenant is attempting to rent the home as a short term vacation rental.

“If a tenant is allowing their rental unit or space within their rental unit to be used for a commercial venture, such as a vacation or travel accommodation, a landlord may issue a One Month Notice to End Tenancy (form RTB-33) for a breach of a material term. Variables such as the terms of the tenancy agreement and whether a tenant remains in occupation of the rental unit will be considered on a case-by-case basis by an arbitrator.”

“Use of rental property for travel/vacation accommodation

Section 4 of the RTA states that the Act does not apply to living accommodations occupied as vacation or travel accommodation and there is no recourse under the RTA for disputes arising from vacation or travel accommodation. However, there have been dispute resolution proceedings arising from tenants who have rented out all or part of their rental unit via AirBnB or other vacation/rental listing services and their landlord has issued a One Month Notice to End Tenancy (form RTB-33) for the tenant’s failure to obtain the landlord’s written consent to sublet. As stated above within section C, unless the tenant is acting as an agent for the landlord or has moved out of the unit, this is not a true sublet under the RTA. It is unlikely that a One Month Notice to End Tenancy (form RTB-33) for cause for the tenant’s failure to obtain the landlord’s written consent to sublet would be successful in these circumstances, although this type of action by a tenant may constitute other breaches of the Act or tenancy agreement for which the landlord might issue a One Month Notice to End Tenancy (form RTB-33).

Tenants and landlords should be aware that there may be municipal bylaws and strata restrictions against use of property for travel or vacation accommodations, as well as insurance ramifications in the event of a problem client who causes damages to the unit. The tenant is responsible for any damages caused by any guest or occupant in the rental unit. A landlord could issue a One Month Notice to End Tenancy (form RTB-33) for cause if the rental unit suffered damages as a result of the actions of the tenant or any guest/occupant of the tenant.

As a result, landlords may wish to ensure that additional terms to address this are included in any tenancy agreement in order to maintain control over who occupies the rental unit and for what purposes the rental unit is used. As these are not standard terms of a tenancy agreement under the Act, a prospective tenant and the landlord would have to agree to any additional terms being added to the tenancy agreement. If a

tenant were to violate such a term, the landlord could issue a One Month Notice to End Tenancy (form RTB-33) for cause for breach of a material term of the agreement. The decision to end the tenancy would be upheld if an arbitrator finds that the terms of the tenancy agreement were material terms that were not unconscionable and that the tenant breached those terms.”

In this specific case, although the landlord may have expressed that they were not consenting to the short-term vacation rental, and have contacted the municipal bylaw or licensing office, the landlord has not served the tenant with a One Month Notice to End Tenancy in the proper form. I find that there are no Notices to End Tenancy to uphold.

I informed the tenant during the hearing that they were responsible for obtaining their own legal advice on how to proceed with the matter, but that at this time, the landlord has not served the tenant with a 1 Month Notice to End Tenancy, nor has the landlord applied for an Order of Possession.

I note that section 65(1)(g) of the *Act* only applies to applications for an order allowing the tenant to assign or sublet a rental unit because the landlord's permission has been unreasonably withheld. A short-term rental does not qualify as a sublet or assignment situation in this case.

Section 62 of the *Act* allows a director to make any order necessary to give effect to the rights, obligations, and prohibitions under this *Act*, including an order that a landlord or tenant comply with the *Act*, the regulations, or a tenancy agreement and an order that this *Act* applies. I have no authority under the *Residential Tenancy Act* to order that the landlord agree to amend or change a tenancy agreement, nor do I have authority to order that a landlord endorse or provide a letter of authorization to a municipal licensing office for short-term rental licensing purposes.

Section 62(4)(a) of the *Act* states:

Director's authority respecting dispute resolution proceedings

62(4) The director may dismiss all or part of an application for dispute resolution if
(a) there are no reasonable grounds for the application or part,

As noted above, I find that the tenants' application does not disclose a dispute that may be determined under the *Act*. I therefore exercise my authority under section 62(4)(b) of the *Act* to dismiss this entire application 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: January 13, 2023

Residential Tenancy Branch