



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC FFT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Applicant pursuant to the *Residential Tenancy Act* (the “Act”) in which the Applicant seeks:

- compensation from the Respondents related to the end of a subtenancy agreement pursuant to section 51.1(1); and
- authorization to recover the filing fee for the Application from the Respondents pursuant to section 72.

The Applicant, one of the two Respondents (“SG”) and an agent (“CW”) for property manager for the other Respondent (“LHC”) attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Applicant stated he served the Notice of Dispute Resolution Proceeding and his evidence (collectively the “NDRP Package”) on each of the Respondents by registered mail on December 8, 2022. The Applicant submitted into evidence the Canada Post tracking stubs for service of the NDRP Packages on the Respondents to corroborate his testimony. SG acknowledged she and LHC received the NDRP Packages. As such, I find the NDRP Packages were served on the Respondents in accordance with the provisions of sections 88 and 89 of the Act.

SG stated the Respondents served their evidence on the Applicant by registered mail. The Applicant acknowledged receipt of the Respondents' evidence. As such, I find the Respondents' evidence was served on the Applicant in accordance with the provisions of section 89 of the Act.

Preliminary Matter – Removal of Two Applicants from Application

When I asked, the Applicant stated the other parties named as applicants in the Application are his wife ("XF") and child ("TS"). I noted that they were not named as parties to the subtenancy agreement between him and SG. The Applicant then made a request that I amend the Application to remove XF and TS from the Application. SG and CW did not object to the proposed amendment.

Residential Tenancy Branch Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As SG and CW did not object to the proposed amendment, I order the Application to be amended to remove XF and TS as applicants.

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Applicant submitted into evidence a copy of a signed subtenancy agreement ("Agreement"), dated December 20, 2020, between the subtenant and SG. The Agreement states the subtenancy for the rental unit commenced from January 1, 2020, to June 30, 2020. At the hearing, the parties agreed that the Agreement should have stated the subtenancy would end on June 30, 2021. The Agreement provided the Applicant could take possession of the rental unit on December 24, 2020. The parties

agreed the Applicant was paying \$940.00 per month for the subtenancy. The Agreement stated the subtenant was to pay a security deposit of \$600.00. The parties agreed SG extended the term of the subtenancy from January 1 to June 30, 2021 and extended it again from July 1, 2021 to June 30, 2022. SG and CW stated there was an agreement ("Head Lease") between LHC and SG that established a tenancy for the rental unit, on a month-to-month basis, commencing about five years ago. SG and CW stated LHC gave permission to SG to sublet the rental unit to the Applicant. The Applicant did not dispute the existence of the Head Lease between LHC and SG. The Applicant stated he vacated the rental unit on June 22, 2022.

The Applicant stated SG did not occupy the rental unit within a reasonable period of time after the date the subtenancy ended and failed to occupy the rental unit for a minimum of six months after taking occupation. SG did not dispute this testimony. The Applicant argued SG was required to pay him the equivalent of 12 times the monthly rent payable by the Applicant pursuant to the provisions of the Act.

Analysis

Section 1 of the Act defines a sublease agreement as:

"sublease agreement" means a tenancy agreement

- (a) under which
 - (i) *the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and*
 - (ii) *the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and*
- (b) that specifies the date on which the tenancy under the sublease agreement ends;

As defined in section 1 of the Act, a sublease is an arrangement in which the tenant of a rental unit transfers the tenants right to possess the rental unit for a period shorter than the term of the tenant's tenancy agreement and the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement as specified in the agreement. The Agreement meets all the requirements for the agreement to be a "sublease agreement".

Residential Tenancy Policy Guideline 19 ("PG 19") provides guidance on subletting of rental units. Under the heading "C. Subletting", PG 19 states:

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.

Landlord is defined in the RTA as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, **on behalf of the landlord**,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, **other than a tenant occupying the rental unit**, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

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.

The sub-tenant's contractual rights and obligations are as set out in the sublease agreement. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.

[...]

While the *RTA* does not specify what the rights and responsibilities of the original tenant and subtenant are, the common law, pursuant to s. 91 of the *RTA*, may apply. In the event of uncertainty around the rights and responsibilities of parties to a sublease agreement, an arbitrator will consider the individual circumstances and evidence of each case in making a determination.

The sub-tenant typically pays rent to the original tenant; but even if he or she fails to do so, the original tenant's responsibility to pay rent to the landlord is unaffected and the original tenant can be evicted if rent is not paid. *Again, it should be noted that there is no contractual relationship between the original landlord and the sub-tenant. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.*

Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve some period of time at the end of the sublease, the agreement likely amounts in law to an assignment of the tenancy rather than a sublease; an arbitrator may make that determination in a hearing.

[emphasis in italics added]

As noted in PG 19, a subtenant has exclusive occupancy of the rental unit during the period specified in the subtenancy agreement. However, there is no relationship between the landlord of the rental unit and the subtenant. There is no evidence before me that LHC was ever a party to the Agreement or that a tenancy was created between LHC and the Applicant. As such, the Applicant was never a tenant of LHC for the purposes of section 51(2). Based on the foregoing, I dismiss the Applicant's claims against LHC without leave to reapply.

The subtenancy between SG and the Applicant was for a fixed term ending June 30, 2021 then ultimately extended to June 30, 2022. As stated in PG19 the subtenant does not acquire the full rights provided to tenants under the Act. I find there is no evidence that SG ever agreed to assign all her rights to the Head Lease to the Applicant. As such, the Applicant did not acquire all the rights SG was entitled to pursuant to the provisions of the Act. Section 51.1(1) of the Act states:

- 51.1(1) Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
- (a) steps have not been taken, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance, or
 - (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

The very nature of a subtenancy requires the subtenant to vacate the rental unit at the end of the date specified in the subtenancy agreement. As such, it would be inconsistent for the Act to require a subtenancy to end on a date before the end of the head lease and then require the tenant of the head lease to pay compensation equal to 12 months of rent to the subtenant. Furthermore, if the legislature had intended that subtenants would also be entitled to compensation under section 51.1(1) of the Act, then it could have incorporated language in section 51.1(1) that gives subtenants that

right. As such, I find the Applicant is not entitled to any compensation from SG as a result the end of the subtenancy pursuant to the provisions of the Agreement, as amended, notwithstanding SG did not occupy the rental unit within a reasonable period of time. Based on the foregoing, I dismiss the Applicant's claims against SG without leave to reapply.

I dismiss the Application in its entirety without leave to reapply.

Conclusion

The Application is 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: May 7, 2023

Residential Tenancy Branch