



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on January 2, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order to allow the tenant to assign or sublet because the landlord's permission has been unreasonably withheld?
- b. Whether the tenant is entitled to an order allowing access to (or from) the unit or site for the tenant or the tenant's guest?
- c. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation or tenancy agreement?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on April 1, 2014 when the parties entered into a one year fixed term tenancy agreement that would become month to month at the end of the year. The tenancy agreement provided that the tenant(s) would pay rent of \$700 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$350 at the start of the tenancy.

.The agent for the tenant seeks an order that he be permitted to stay in the rental unit with the tenant based on the following:

- The tenant is 83 years old and has limited ability to get around. The agent purchased a mobility scooter for the tenant.
- The rental property has a number of unsavoury tenants living in it. A number of other residents in the rental property are stealing from and taking advantage of him. The agent would be in a position to protect him from these people.
- .He has cooked for the tenant and ensures that the tenant is adequately taken care of.
- He made a request to the landlord that he be added to the tenancy agreement as a co-tenant. The landlord denied this request before adequately checking his suitability to live in the rental unit.

The landlord testified they denied his request that he be added to the tenancy agreement because of previous misconduct by the agent. In particular the landlord testified:

- The tenant stole a piece of carpet that did not belong to him from a balcony of the manager without asking or obtaining the permission of the owner;
- The manager witnessed the agent participating in what appeared to be a drug transaction;
- On January 16, 2015 the agent was escorted off the property by the police after he grabbed another tenant who had stolen food from the tenant.

- The landlord testified they were not concerned about the tenant's financial resources as he did not satisfy their conduct policy.

The agent denied the allegations of misconduct. He testified he does not have an alcohol or drug habit. The taking of the carpet was a misunderstanding. The allegations of assault with respect to another female tenant are exaggerated and involve his efforts to protect the tenant.

Application for an Order that the landlord has unreasonably withheld consent to an assignment or sublease:

Section 34 of the Residential Tenancy Act provides as follows:

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 is for 6 months or more, 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.

Policy Guideline #3 includes the following definition

Assignment

Assignment is the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. In a manufactured home site tenancy, an assignment usually coincides with the sale of the manufactured home.

The assignee takes on the obligations of the original tenant commencing at the time of the assignment, and is not responsible for actions or failure of the assignor to act prior to the assignment. Unless the landlord agrees otherwise, the

original tenant may retain some residual liability, in the event of a failure of the assignee to carry out the terms of the tenancy agreement or lease.

Subletting

A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve the last day or some period of time at the end of the sublease, the agreement amounts in law to, and will be treated as, an assignment of the tenancy

At all material times the tenant was going to continue to live in the rental unit. I determined this was not an assignment or a sublet as the tenant is not giving up possession of the rental unit to the agent. Thus I determined section 34 of the Residential Tenancy Act does not apply. The tenant's application is dismissed.

Whether the tenant is entitled to an order that the landlord comply with the Act, regulation or tenancy agreement?

The real question is whether the landlord can prevent the agent for the tenant from moving in and living with the tenant as an occupant?

Policy Guideline #13 includes the following definition:

“Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.”

Under section 47 the landlord has the right to end the tenancy for cause if there are an unreasonable number of people living in the rental unit. This is a one bedroom suite

and it appears that if the agent lives with the tenant there would be two people living in that unit. Without deciding that issue it seems to me that the landlord would have a difficult time succeeding on that point. Alternatively, the landlord may allege the tenant has breached a material term of the tenancy agreement by allowing an occupant in where he has not obtained the landlord's permission. That issue cannot be determined as neither party presented a copy of the tenancy agreement. In the absence of the of the tenancy agreement it is not possible for an arbitrator to make such a determination.

As a result I dismissed the tenant's application for an order that the landlord comply with the Act, regulation or tenancy agreement with liberty to re-apply.

Whether the tenant is entitled to an order allowing access to (or from) the unit or site for the tenant or the tenant's guest?

Paragraph 9 of the Schedule to Residential Tenancy Act Regulations which is incorporated into all tenancy agreements provide as follows:

Occupants and guests

- 9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

I have referred the parties to section 9 of the scheduled to the Residential Tenancy Act Regulations. I determined that it was not appropriate to make an order with respect to this as there is insufficient evidence that the landlord is denying access to the tenant's guests.

Conclusion

In conclusion I dismissed the application of the tenant for an order that the landlord has unreasonably withheld his consent to an assignment or sublet as what is proposed by the tenant and his agent is not an assignment or a sublet. I dismissed the tenant's application for an order that the landlord comply with the Act regulations or tenancy agreement with liberty to re-apply as neither party provided a copy of the tenancy agreement which is necessary for this determination. I dismissed the tenant's application for an order allowing access to (and from) the unit or site for the tenant or the tenant's guest as there is insufficient evidence that the landlord is denying access. I dismissed the tenant's application to recover the cost of the filing fee as the tenant has not been successful with this application.

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: February 10, 2015

Residential Tenancy Branch

