



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OLC FF

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony, to present evidence and to make submissions. There were no issues raised with respect to the service of the application and evidence on file.

Issues

Should an order be issued requiring the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began on April 1, 2016. The rental unit is a 2 bedroom apartment. The monthly rent is \$1650.00 payable on the 1st day of each month.

The tenants are requesting they be allowed to have a roommate for the second bedroom. The tenants currently share one bedroom and entered into a room rental agreement with a roommate. The roommate was in the process of moving in when the landlord took away the roommates key. The tenants argue they are not subletting the rental unit but just adding an additional occupant. The tenants argue their tenancy agreement is silent on additional occupants.

The tenants are also requesting the landlord provide an additional key for the roommate. They were originally provided with three keys and the landlord has taken one key back.

The landlord argues the tenants are subletting the rental unit without consent contrary to the Act. The landlord further argues that Residential Tenancy Branch Policy Guideline #19 specifically refers to subletting in cases where the tenant remains in the rental unit. The landlord further argues that there were communications between the parties prior to entering into the agreement with respect to subletting not being permitted. Further the tenancy agreement addendum contains a clause with respect to subletting not being permitted without consent in writing. The landlord further argues that the room rental agreement between the tenants and the roommate contains all the hallmarks of a tenancy agreement.

With respect to the tenants request for an additional key, the landlord states the third key was only provided to the tenants temporarily when one of the tenants mother was visiting.

Analysis

Residential Tenancy Policy Guideline #19 Assignment & Sublet provides guidance as follows:

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.

C. SUBLETTING

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an

occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant. 'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the Act, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship, as discussed in the "sublets as contemplated by the RTA" section above. If there is a landlord/tenant relationship, the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

A tenancy agreement is defined under section 1 of the Act as follows:

"tenancy agreement" *means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

Landlord is defined under section 1 of the Act as follows:

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

...

- (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;

The definition of a tenancy agreement under the Act implies that it is an agreement between a landlord and a tenant. The definition of landlord under the Act specifically excludes a **tenant occupying the rental unit**.

As the tenants in this case are continuing to occupy the rental unit, the tenants can not be landlords as defined under the Act; therefore, the roommate agreement entered into

between the tenants and the roommate is not a tenancy agreement as defined under the Act.

The reference in the Policy Guideline to subletting applying to situations where the tenant remains in the rental unit may be referring to cases in which the tenants have sublet a self-contained unit such as a separate basement suite within a larger rental unit. In this case, the tenants are continuing to occupy the same rental unit as the roommate so it is not a true sublet as contemplated by the Act.

I find the tenancy agreement is silent on any provision with respect to additional occupants so the landlord is not permitted to restrict the tenants from having a roommate. The landlord is ordered to comply with the Act and not restrict the tenants from having an additional roommate.

As the key is a specialized fob which the tenants cannot duplicate themselves, the landlord is further ordered to make a third key available to the tenants. However, as the landlord is only required to provide one set of keys to each of the tenants, the additional key will be at the tenants own cost and/or deposit fees.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenants may reduce a future rent payment in the amount of \$100.00.**

Conclusion

The landlord is ordered to comply with the above findings and orders. 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: June 22, 2017

Residential Tenancy Branch