



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES and BEACH TOWERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, FFT

Introduction

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

- an Order to allow an assignment or sublet when permission has been unreasonably denied, pursuant to sections 34 and 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on March 18, 2019. The tenant entered into evidence a Canada Post Tracking Number and receipt to confirm this registered mailing. The property manager (the "landlord") confirmed receipt of the dispute resolution package on March 20, 2019. I find that the landlord was served with this package on March 20, 2019, in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to an Order to allow an assignment or sublet when permission has been unreasonably denied, pursuant to sections 34 and 65 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified to the following facts. The tenant rented the subject rental property to downsize from the condominium she owns. The renters the tenant had arranged for her condominium backed out at the last minute. The tenant was not immediately able to rent out her condominium. To help with finances, the tenant listed the subject rental property on an online vacation rentals website. Several vacation guests stayed at the subject rental property.

The tenant testified that she stopped operating vacation rentals out of the subject rental property when she received her first warning from the landlord. Two warning letters from the landlord were entered into evidence. The tenant testified that after she stopped vacation rentals, she did allow some of her friends to stay for a few nights at the subject rental property.

The tenant testified to the following facts. In mid-February 2019 she learned that she was pregnant and so decided that downsizing was no longer a good idea and decided to continue to reside in her own condominium.

The tenant testified that she provided the landlord with a request for permission to sublet in a letter dated March 8, 2019. The March 8, 2019 letter was entered into evidence. The landlord did not dispute receipt of this letter.

Both parties agreed that an agent of the landlord e-mailed the tenant on March 11, 2019 and stated as follows:

According to our Manager, since you are doing [vacation rentals] for your first month, your name will be removed after you find the least take over.

Please ask your friend to fill out the application form online and once we approved we will let you know.

And you will still be responsible to pay the liquidated damages.

The tenant testified that she wants to sublet the subject rental property to one individual, not for the purposes of short-term vacation rentals. The tenant testified that the landlord is unreasonably denying her sublet. The landlord testified that the tenant is being denied a sublet because she breached her tenancy agreement by using the subject rental property for short term vacation rentals.

Analysis

Section 34 of the *Act* states:

- 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.

Section 16 of the Tenancy Agreement States:

ASSIGN OR SUBLET. The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length and has 6 months or more remaining in the term, the landlord must not unreasonably without consent. Under an assignment a new tenant must assume all of the rights and obligations under this tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent. If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the *Act*.

Residential Tenancy Branch Policy Guideline #16 states:

In the case of a fixed term tenancy agreement under the Residential Tenancy Act, the landlord cannot unreasonably withhold consent if there are six months or more remaining in the term.

While it is clear that the tenant used the subject rental property for vacation rentals for some period of time, I find that the tenant's use of the subject rental property for vacation rentals is not directly linked to the tenant's request to sublet to one individual on an ongoing basis. The landlord has recourse under the *Act* to deal with the tenant's use of the subject rental property for vacation rental purposes; I find that withholding consent for sublet is not one of them.

In this case, there are more than six months remaining on the fixed term tenancy agreement. I find that the landlord is unreasonably withholding consent for the tenant to sublet the subject rental property.

I Order the landlord to allow the tenant to sublet the subject rental property, pursuant to sections 34 and 65 of the *Act*.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

I Order the landlord to allow the tenant to sublet the subject rental property, pursuant to sections 34 and 65 of the *Act*.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord, pursuant to section 72 of the *Act*.

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 07, 2019

Residential Tenancy Branch