



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cagayan Air Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on April 14, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- I want to be allowed to assign or sublet and the landlord's permission has been unreasonably withheld

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each others evidence. No service issues were raised.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to an order that he be allowed to sublet his rental unit and has the Landlord unreasonably withheld permission?

Background and Evidence

A copy of the tenancy agreement was provided into evidence, which specifies that the tenancy started around April 15, 2014. The tenancy agreement was initially set for a

fixed term, ending on April 30, 2015. Following this, the tenancy reverted to a month-to-month tenancy. The Tenant stated that he is a pilot and as a result, he sometimes leaves town for work, for extended periods of time. The Tenant stated that on numerous occasions in the past, he has successfully subleased his apartment for the period of time he is away working.

The tenancy agreement contains a clause as follows:

“16. 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 term of 6 months or more, the Landlord must not unreasonably withhold 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.”

The Tenant stated that in the past, he would approach the property manager, and get her approval, prior to subletting his unit. He stated he has done this a few times without issue, and he takes care in finding suitable Tenants to live in his unit while he is away.

The Tenant stated that he is currently asking for permission to sublease his apartment for May 1, 2022, until August 31, 2022, the period of time he is supposed to be away working in another country. The Tenant stated that the new property manager, who took over in February 2022, denied his request to sublet his unit, despite the conversation he had with the previous property manager in January 2022.

The Tenant stated that on January 10, 2022, he spoke with the previous property manager, K.Y., and warned her of his imminent request. The Tenant stated that he sent K.Y. an email (a copy of which was provided into evidence) on January 10, 2022, stating that there was a possibility that he will be required to be away for work reasons for February – April 2022, and that he was requesting the Landlord's written consent to sublet for that period of time. K.Y. responded that same day stating that if the Tenant wished to sublet, he must provide the name of the person who would stay in the unit for the duration of the leave. K.Y. stated that once that information was in hand, then the sublease agreement would be completed. K.Y. noted that all the terms of the agreement are well laid out and that the Tenant would be responsible for rental payments and the actions of the subtenant.

The Tenant stated that he considered the January 10, 2022, email as authorization, and he proceeded to make plans to be away for work, and find a sub-tenant. The Tenant stated that on February 18, 2022, he wrote the new property manager stating he was

still hoping to sublet, but for a slightly different date range, from April – June 2022, and maybe extended until September 2022. The Tenant again asked the new property manager asking for permission to sublet. The Landlord's new agent, J.W., responded on February 24, 2022, and stated that since he is no longer on a fixed term tenancy, that the request is denied.

The Landlord's agent, J.W., stated that he has read the previous email from the previous property manager, and it is his opinion that the tone is such that she was open to receiving the Tenant's application to sublet (and names of prospective sub-Tenant) but it in no way constitutes permission. J.W. stated that it is their policy to not allow subleases.

Analysis

A party that makes an application against another party has the burden to prove their claim. In this case, the Tenant is seeking permission to sublet his rental unit, as he feels the Landlord has unreasonably withheld this permission.

First, I turn to the following portion of the Act:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

[...]

(g) that a tenancy agreement may be assigned or a rental unit may be sublet if the landlord's consent has been unreasonably withheld contrary to section 34 (2) [assignment and subletting].

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 has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

Section 65(1)(g) of the Act specifies that I, as a delegate of the Director, may permit the Tenant to sublet the rental unit, if the Landlord's consent has been unreasonably withheld, contrary to section 34(2) of the Act. Section 34(2) of the Act speaks to situations where, if there is a fixed term tenancy agreement of 6 months or more, the Landlord may not unreasonably withhold consent, or written permission to sublet the unit. However, I note this tenancy agreement is currently on a month-to-month basis, and there is no fixed term tenancy. As a result, I find the Landlord has not breached section 34(2) of the Act, such that I ought to make an order under section 65(1)(g) of the Act to permit the Tenant to sublet his unit.

In this case, the decision as to whether or not to allow the Tenant to sublet his unit is discretionary, and I find the Landlord was under no obligation to allow the sublease in this case.

With respect to the email from January 10, 2022, where the Tenant asserts he was given permission by the previous property manager, K.Y., I do not find the verbiage was sufficiently clear or explicit, as to consider this written permission to sublet the unit. The language in the email is somewhat vague, and appears to refer, in part, to what has been done in the past, and also what would be considered once the Tenant put forth names of prospective sub-tenants. I note the Tenant never gave any names of prospective sub-tenants, and I also note that his date range for his potential sublet changed from his initial email on January 10, 2022, (February – April), to what it is now (May – August). In any event, I do not find the email from the previous property manager was such that it represents written consent from the previous property manager, K.Y.

The new property manager, J.W., denied the request for sublet, and at this time the Tenant is not authorized to sublet his unit. I dismiss the Tenant's application for permission to sublet his rental unit, without leave.

Conclusion

The Tenants' application is dismissed, in full, 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: April 19, 2022