



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, FF

Introduction

This was the hearing of the tenants' application for an order allowing the tenants to assign or sublet the tenancy because the landlord has unreasonably withheld consent. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The respondents did not participate although each respondent was served with the application for dispute resolution and Notice of Hearing sent by registered mail on May 9, 2012.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to assign the tenancy agreement?

Background and Evidence

The rental unit is an apartment in Chilliwack. I was not provided with a copy of the tenancy agreement, but the tenants advised that the tenancy began on September 1, 2011 for a one year term ending August 31, 2012. The rent is \$675.00 per month and the tenants paid a \$340.00 security deposit before the commencement of the tenancy.

On April 23, 2012 the tenants advised the landlord's agent that they wanted to find someone to take over their lease. The agent responded as follows:

If you want to try and have someone take over the lease...than you may do so, however this will still need to be approved through us. Let me know, thanks! I will not be out there to show the property this will be up to both of you. Thanks
(reproduced as written)

The tenant asked several question about information to obtain from prospective tenants and the rental amount sought. The agent replied that:

I will contact their references...etc. Rent is the same as you are paying...you can show clients if you choose...I will not be responding to emails after 5 pm unless it is an emergency. Thanks!

The tenants showed the rental unit to several prospective tenants and provided particulars by e-mail to the landlord's agent. On April 28, 2012 they notified the landlords that they would be moving out of the rental unit on June 1, 2012.

On May 3, 2012 the tenants provided the landlord's agent with particulars and references for an interested prospective tenant. The landlord's agent responded as follows:

Thank-you for this information. As previously discussed many times I will not be interviewing clients for (address of rental unit). I have explained to you that you have no reason to break your lease. Again this is your choice. I am the realtor for this property and not the owner. If you wish to break your lease, there will be further action taken against you. Thanks!

On May 7, 2012 the tenants applied for an order allowing the tenant to assign or sublet the rental unit based upon the apparent refusal of the landlord's agent to consider prospective tenants for the rental unit.

Analysis and conclusion

Section 34 of the *Residential Tenancy Act* provides that:

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.

Because this is a fixed term tenancy agreement for a term of more than six months, the landlord may not unreasonably withhold consent to an assignment or sublet of the tenancy agreement. The tenants have not applied to obtain permission to sublet to a particular person; they have applied because the landlord's agent appears to have refused to consider an assignment or sublet to anyone proposed by the tenants.

The remedy requested by the tenants is one that contemplates the approval of a sublet to a specific prospective tenant, not an application generally requiring the landlord to accept an unspecified person as a replacement tenant.

In the event that the landlord applies to claim loss of revenue from the tenants they may rely on the information provided to show that the landlord has not acted properly to mitigate her damages, but in the absence of an identifiable party to whom the tenants propose to sublet, the application is dismissed.

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 30, 2012.

Residential Tenancy Branch