



Order under Section 98 Residential Tenancies Act, 2006

Citation: ROEST v SIMPSON, 2024 ONLTB 5457

Date: 2024-01-24

File Number: LTB-T-062736-22

In the matter of: 317, 35 KINGSBURY SQUARE
GUELPH ON N1L1C3

Between: Mitchell Roest Tenant

And

Leila Simpson Landlord

2024 ONLTB 5457 (CanLI)

Mitchell Roest (the 'Tenant') applied for an order determining that Leila Simpson (the 'Landlord') arbitrarily or unreasonably withheld consent to the assignment or sublet of the rental unit to a potential assignee or subtenant.

This application was heard by videoconference on January 11, 2024.

The Landlord and the Tenant were initially both in attendance. However, before the hearing commenced, around 9:25am, the Landlord disconnected from the video hearing. The Landlord did not re-connect to the hearing nor contact the Board to inform of any issues. The matter proceeded at 11:00am with only the Tenant's evidence.

Determinations:

Unreasonable refusal consent to sublet

1. On March 12, 2022 the Tenant asked the Landlord for consent to sublet the rental unit to a potential subtenant. The Tenant explained that they need to vacate the property beginning May 1, 2022 and return September 1, 2022 due to work commitments. In order to alleviate their financial strain, they sought permission to sublet the rental unit for four months.
2. On March 16, 2022 the Landlord refused to consent to the sublet. The Landlord provided the following reason for the refusal by way of their agent/property manager:

“Hi Mitchell

I just heard back from Leila regarding your request.

Based on previous bad tenant experiences with a sub let Leila will not permit a sublet of any of her properties. Sub lets can create many complex tenant issues between tenant, sub let tenant and landlord which Leila does not want to be a part of.

She is happy to release you from your agreement to lease providing that you give 60 days written notice to vacate. Please keep in mind that notice only comes into effect on

the next rent day so the 60 days would start on April 1st if you give notice prior to then with a move out date of May 31st. Please let me know your intension or decision so that we can start to advertise the unit and search for a new tenant.”

3. On May 1, 2022 the Tenant asked the Landlord to reconsider the position on allowing the Tenant to sublet the unit.
4. On May 16, 2022 the Landlord’s agent/property manager replied to the Tenant stating:

“ I am sorry but under no circumstances whatsoever will i or can i permit the condo to be sublet at anytime. Also my insurance does not cover me for sublets” If tenant wants to leave then that is fine, he can give notice and you can rent it to a long term tenant for a higher monthly rent
Please let me know what you decide, if you want to stay or give notice.”
5. The Tenant provided evidence that he lived with his parents in Tillsonburg from May 1, 2022 through August 31, 2022 as it was right next to his work opportunity. During the months of May, June, July, and August 2022 the Tenant paid rent to the Landlord totalling \$7,200.00 (\$1,800 X 4) despite his inability to reside in the rental unit.

Analysis

6. Subsection 97(1) of the *Residential Tenancies Act, 2006* (the Act) states that a tenant may sublet a rental unit to another person with the consent of the landlord. Subsection 97(2) states that “A landlord shall not arbitrarily or unreasonably withhold consent to the sublet of a rental unit to a potential subtenant”.
7. Based on the Tenant’s uncontested evidence, I find that the Landlord arbitrarily or unreasonably refused consent to the sublet of the rental unit to the potential subtenant. Specifically, the Landlord’s rationale can be summarized as follows:
 1. that she had experienced previous “bad tenant experiences” with sublets;
 2. that it creates “complex tenant issues” surrounding landlords, tenants, and subtenants; and
 3. “insurance doesn’t cover me for sublets”.
8. I find that the real substance of the Landlord’s position is that she categorically refused to consider any sublet because wishes to rent out the unit to another tenant at a higher rent, as evidenced in the Landlord’s agent’s response on May 16, 2022. The Tenant’s request was reasonable, given the short period he required to be out of the rental unit. The Landlord’s blanket refusal to the request was unreasonable and contrary to the Act.

Remedies

9. At the hearing the Tenant sought a rent abatement of four months (\$7,200.00) as a remedy.
10. The Tenant’s application has two different requests for a rent abatement as a remedy. The first is in the box indicating they seek \$3,600.00. However, in the explanation section the

Tenant states that he could be losing four months of rent at \$1,800.00 per month. I am satisfied that the Landlord was made aware that a potential award of \$7,200.00 was a possible outcome of this hearing.

11. Section 98(3) of the Act provides the Board the jurisdiction to award an abatement to the Tenant. Due to the Landlord's unreasonable refusal to allow the Tenant to sublet, I find that the Tenant is entitled to a rent abatement of \$7,200.00.

It is ordered that:

1. The Landlord shall pay the Tenant \$7,253.00. This amount represents:
 - \$7,200.00 for a rent abatement.
 - \$53.00 for the cost of filing the application.
2. The Landlord shall pay the Tenant the full amount owing by February 4, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by February 4, 2024, the Landlord will owe interest. This will be simple interest calculated from February 5, 2024 at 7.00% annually on the balance outstanding.
4. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 24, 2024
Date Issued

Brett Lockwood
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.