



Order under Section 98
Residential Tenancies Act, 2006

File Number: SWT-43533-20

In the matter of: 601, 754 KIPPS LANE
LONDON ON N5Y4V3

Between: BB; Tenants
RP

and

Galaxy Value Add ON Properties L.P. Landlord

The Tenants applied for an order determining that the Landlord arbitrarily or unreasonably withheld consent to assign the rental unit.

This application was heard by videoconference on April 19, 2021.

The Tenants and the Landlord attended the hearing. The Tenants were represented by SH. The Landlord was represented by SL.

Also in attendance was the Landlord's witness, DC.

Determinations:

A2 APPLICATION

1. The Tenants' A2 application, filed on April 30, 2020 was filed pursuant to subsection 98(1) of the Residential Tenancies Act, 2006 which states:

98 (1) A tenant or former tenant of a rental unit may apply to the Board for an order determining that the landlord has arbitrarily or unreasonably withheld consent to the assignment or sublet of a rental unit to a potential assignee or subtenant.

2. The Tenants entered into a fixed term tenancy commencing September 1, 2019 and ending August 31, 2020 with the lawful monthly rent set as \$1,225.00 due and payable on the first day of each month.

Tenant's Evidence

3. The first-named Tenant testified that on or about March 20, 2020, he went to the Landlord's office and inquired about the process for terminating the lease. He explained that he and his wife moved from Hearst to London to complete their nursing courses; they are both registered practical nurses who are employed by the hospital in Hearst, ON.

Due to the COVID19 pandemic shutdown, their classes shifted online, so they were debating on moving back to Hearst and finishing there.

4. The Landlord presented the available options for terminating the lease early; the Tenants choose the option of finding another tenant to whom they could assign their lease and the Landlord provided the appropriate paperwork to facilitate the process.
5. Shortly thereafter, on April 3, 2020, the Tenants received an e-mail from their employer in Hearst, ON, asking them to return to work given the pandemic climate and staff shortages. This increased the need for the Tenants to find an assignee so that they could move back and help their community hospital.
6. The Tenants advertised their unit on multiple platforms by posting on Facebook, ads on other websites and had multiple inquiries. They found two potential assignees, asked them to fill out the assignee form provided by the Landlord and sent both of them to the Landlord's employee Ashley Clare on April 16, 2020. They inquired a few days later on the status of their request and were told that the leasing coordinator required the missing documents, which the potential assignees were informed about and the Landlord was awaiting their arrival to proceed with processing their request. This is confirmed in the email thread submitted by the Tenants as evidence.
7. On April 23, 2020, the leasing coordinator DL emailed the first potential assignee, ON, advising them that their application had been declined. On April 24, 2020, the leasing coordinator e-mailed the second potential assignee, AP, advising them that their application had been declined. When the Tenants inquired with DC why, they were told that due to privacy laws, the information could not be shared with them. On April 27, 2020, the Tenants vacated the rental unit.
8. On cross-examination, the Tenants confirmed that their representative – on their instruction - submitted a N9 notice of termination on April 30, 2020 with a termination date of May 31, 2020. The Tenants also disagreed that their last month rent deposit should have been applied towards the rent for April 2020 and not May 2020.
9. The Tenants sought a termination of their tenancy effective April 30, 2020 and return of the last month rent deposit in the amount of \$1,225.00.

Landlord's evidence

10. The Landlord's witness, Dipyendu Chaudhri (DC) is a regional manager and has been employed by the Landlord for the past four years. This residential premises fell under his portfolio. He testified that the Landlord's assignment process is as follows: the Landlord receives the request, the Tenant finds prospective assignees and they go through the application screening process after they provide all of their documentation. This process usually takes between 48 and 72 hours if all the documents are received and in order.
11. DC explains that a successful potential assignee application must include all completed documents, a credit score in the "good" range, a rent to income ratio equivalent to or above 50:50, a credit utilization percentage of under 100%, and timely payment to creditors (part of the credit report).

12. He testified to personally reviewing both potential assignees' documents. With respect to ON's application, DC testified that there was a delay in receiving documentation – specifically the proof of income for the second potential tenant, but when it was received, while the credit score and credit utilization rates were okay, the rent to income ratio fell below the 50:50 standard set by the Landlord. DC explains that the ratio was previously 60:40 but due to the pandemic, it was adjusted to 50:50. As such, the application for this potential assignee was declined.
13. On cross-examination, DC confirmed that for the first potential assignee, the rent was 77% of the combined income for both applicants; further, the credit utilization percentage was reviewed but was not a concern as it was 65% and there were no late payments. The Landlord did not ask the applicants whether they were new Canadians as this was not a relevant factor in deciding whether to approve the application.
14. For the second potential assignee, AP, there was also a delay in receiving documents but when it was received, the credit utilization rate was more than 100%. Further, the credit score was low, while the rent to income ratio was okay.
15. DC also confirmed that while the second potential assignee had sufficient income to afford the place, he was delinquent in his payments either by paying late or not at all, and the credit utilization percentage was substantially high. DC also confirmed that while he did not have the paperwork in front of him, after the Tenants vacated, renovations would have been conducted in the rental unit prior to renting it out again; that there may have been other vacant units at the same time and that it was difficult to fill these units due to the pandemic. He confirmed that he did approve assignees in the past when the requirements were met and assisted the Tenants in their search by responding promptly to those who did not qualify and following up in a timely manner with respect to the missing documentation from the potential assignees.
16. The Landlord seeks that the application be dismissed.

ANALYSIS

17. Based on the evidence before the Board, I do not find that the Tenants have been successful in establishing that the Landlord has arbitrarily or unreasonably withheld consent to assign the rental unit.
18. Landlords are subject to the provisions of Ontario's *Human Rights Code*, specifically Ontario Regulation 290/98 concerning how landlords are supposed to approach issues of income in accepting or refusing prospective tenants. It states:
 - (1) A landlord may request credit references and rental history information, or either of them, from a prospective tenant and may request from a prospective tenant authorization to conduct credit checks on the prospective tenant.
 - (2) A landlord may consider credit references, rental history information and credit checks obtained pursuant to requests under subsection (1), alone or in any combination, in order to assess the prospective tenant and the landlord may select or refuse the prospective tenant accordingly.

(3) A landlord may request income information from a prospective tenant only if the landlord also requests information listed in subsection (1).

(4) A landlord may consider income information about a prospective tenant in order to assess the prospective tenant and the landlord may select or refuse the prospective tenant accordingly only if the landlord considers the income information together with all the other information that was obtained by the landlord pursuant to requests under subsection (1).

(5) If, after requesting the information listed in subsections (1) and (3), a landlord only obtains income information about a prospective tenant, the landlord may consider the income information alone in order to assess the prospective tenant and the landlord may select or refuse the prospective tenant accordingly.

[Emphasis added.]

19. I find the measures used by the Landlord to evaluate the prospective assignees were both reasonable and not in breach of the Human Rights Code's regulation. I also find that the prospective assignees were refused based on the Landlord's analysis of a combination of factors, rather than an outright refusal based on not meeting a particular requirement – for example, even though the rent to income ratio was low, the Landlord still looked at the credit utilization percentage, etc. and came to a final decision on the applicant. I say this based on DC's testimony.
20. Turning to case law on the issue in *1455202 Ontario Inc. v. Welbow Holdings Ltd.*, 2003 CanLII 10572 (ON SC), the court considered whether the Landlord unreasonably withheld its consent to an assignment for a commercial tenancy. The Courts set out the relevant factors, at paragraph 9, which state:

[9] In determining whether the Landlord has unreasonably withheld consent, I believe the following propositions are supported by the authorities cited by counsel and are of assistance:

1. The burden is on the Tenant to satisfy the court that the refusal to consent was unreasonable ... In deciding whether the burden has been discharged, the question is not whether the court would have reached the same conclusion as the Landlord or even whether a reasonable person might have given consent; **it is whether a reasonable person could have withheld consent ...**;
2. In determining the reasonableness of a refusal to consent, it is the **information available to – and the reasons given by - the Landlord at the time of the refusal** - and not any additional, or different, facts or reasons provided subsequently to the court - that is material...Further, **it is not necessary for the Landlord to prove that the conclusions which led it to refuse consent were justified, if they were conclusions that might have been reached by a reasonable person in the circumstances....**;
3. The question must be considered in the light of the existing provisions of the lease that define and delimit the subject matter of the assignment as well as the right of

the Tenant to assign and that of the Landlord to withhold consent. The Landlord is not entitled to require amendments to the terms of lease that will provide it with more advantageous terms... - but, as a general rule, it may reasonably withhold consent if the assignment will diminish the value of its rights under it, or of its reversion: ... **A refusal will, however, be unreasonable if it was designed to achieve a collateral purpose, or benefit to the Landlord, that was wholly unconnected with the bargain between the Landlord and the Tenant reflected in the terms of the lease: ...;**

4. A probability that the proposed assignee will default in its obligations under the lease may, depending upon the circumstances, be a reasonable ground for withholding consent. **A refusal to consent will not necessarily be unreasonable simply because the Landlord will have the same legal rights in the event of default by the assignee as it has against the assignor...;**
5. The **financial position of the assignee may be a relevant consideration.** This was encompassed by the references to the "personality" of an assignee in the older cases ...;
6. The **question of reasonableness is essentially one of fact that must be determined on the circumstances of the particular case,** including the commercial realities of the marketplace **and the economic impact of an assignment on the Landlord.** Decisions in other cases that consent was reasonably, or unreasonably, withheld are not precedents that will dictate the result in the case before the court: ...

[Emphasis added.]

21. In *434916 Ontario Ltd. v. Blackburn* [2005] OJ No. 4925, the tenants asserted that the landlord had unreasonably withheld consent to assignment of the tenancy. The landlord testified that in assessing prospective tenants they consider the person's income, age, employment history, references and credit rating. Depending on these factors, a guarantor was sometimes required. The Court held that the Landlord's approach was not arbitrary or unreasonable.
22. In the case before the Board, I find the Landlord's refusal to be reasonable under the circumstances based on the information that was provided to them. A reasonable person could decline an applicant who did not qualify based on the standard income measures used by the landlord to evaluate prospective assignees. Such standards are reasonable as a failure to pay rent would be detrimental on both parties – it would jeopardize the Tenant's housing status and put the Landlord in an economically adverse position.
23. In light of the above, I do not find that the Landlord has arbitrarily or unreasonably withheld consent to assign the rental unit and the Tenants' application must be dismissed.
24. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The application is amended to reflect the new Landlord as Galaxy Value Add ON Properties L.P.
2. The Tenants' application is dismissed.



April 29, 2021
Date Issued

Sonia Anwar-Ali
Member, Landlord and Tenant Board

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