



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

Dispute Codes: CNC, RP, & FF

### Introduction:

This hearing dealt with an application by the tenant seeking to have a one month Notice to End Tenancy set aside. The tenant is also requesting that repairs be completed at the rental unit. Both parties appeared for the hearing, presented affirmed evidence and had the opportunity to respond to the evidence of the other party.

I have amended the tenant's application to name the co-tenant who did not participate in this proceeding. The co-tenant has vacated; however, the co-tenant remains jointly responsible for the obligations under the tenancy agreement until notice is given to the landlord and all parties agree to remove the co-tenant from the tenancy agreement.

### Issue to be Determined:

Should the one month Notice to End Tenancy be set side?

### Background and Evidence:

The tenant seeks to have the one month Notice to End Tenancy set aside. The tenant submitted that the landlord has not proven the grounds to end the tenancy as the tenant has complied with all recent written demands to correct issues at the rental unit.

The tenant presented the following facts related to the tenancy:

- Tenancy began on November 1, 2008 for the monthly rent of \$2,200.00 and a security deposit of \$1,100.00 paid on October 27, 2008;
- The tenancy is for a fixed term ending effective May 31, 2009;
- The tenancy had two co-tenants and they decided that one tenant would "rent" the lower portion of the house and the other co-tenant would "rent" the upper portion of the house;
- The tenants placed a lock on the joining stairwell and door between the units;
- There was an alleged verbal agreement between one of the co-tenants (who did not appear for this hearing) and the landlord for repairs to be completed, an oral agreement that this tenant would place a lock on the his bedroom door and oral discussions that this tenant may purchase the landlord's property;
- That the landlord gave written permission that the tenants could have two sub-tenants (given November 27, 2008);

- That there was a written agreement that the landlord could show the rental unit once a week after 24 hour written notice was given;
- That there was an oral agreement that the landlord would not place the rental unit on the market until the spring of 2009;
- The tenant who appeared states that there have not been anymore sub-tenants than written permission has been given for and denies obstructing the landlord's agent from showing the rental unit;
- That the landlord knew that the other co-tenant would be locking his door while out of the country;
- That both R.V. vehicles have been removed from the property; and
- The tenant submits that his co-tenant has vacated the rental unit at this point.

The landlord presented in oral and documentary evidence the following:

- The landlord states that original agreement was only for the two tenants and that he did not grant written permission for sub-tenants until after the tenants brought the sub-tenants in;
- The landlord provided evidence from the municipality that only three unrelated individuals may occupy a residence at anytime;
- The landlord submitted evidence from the realtor suggesting that the tenants have unreasonably obstructed the landlord's attempts to sell and show the home and have had more than two other occupants in the rental unit;
- The landlord denies the alleged oral agreements between the other tenant as alleged in the hearing and states that no permission or agreement was made to have a lock placed on that tenant's bedroom door;
- The landlord acknowledges that he did have some discussions with the other tenant about possibly purchasing the property;
- The landlord acknowledged that he verbally agreed that the rental unit would only be shown once a week; however, believed that if the realtor provided proper notice pursuant to the *Act* then it could be shown more often;
- The landlord denies that he agreed to take the house off the market but concedes that he agreed to take down the for sale sign;
- That the tenants damaged the rental unit by placing the lock on the door in the joining stairwell/door in the house and did not have permission to do so;
- The landlord states that he has received no notice from the other co-tenant that he intended or has vacated the rental unit; and
- The landlord submits that his lawful right and interest in the property has been jeopardized by the tenants and that the tenants have unreasonably disturbed him and he requests an Order of Possession.

Analysis:

I have carefully considered the oral and documentary evidence presented and on the balance of probabilities I make the following findings of fact:

- I accept that there are two tenants who signed the fixed term lease and each tenant is liable for meeting the terms of the contract;
- I do not accept the tenant's evidence related to hearsay, oral agreements that he alleges were between the other co-tenant who did not appear for this proceeding and the landlord. These agreements are not corroborated in anyway, are denied by the landlord, are inconsistent with the documentary evidence provided;
- I accept that the landlord has every right under the *Act* to serve notice to change the lock on the bedroom and properly enforced that right – the tenants are liable for any costs associated with removing the lock on the bedroom door;
- I accept the written evidence that the tenants received permission to have two sub-tenants in November 2008. However, I accept the landlord's evidence that this permission was granted after the tenants already had moved the sub-tenants in without prior permission. I also accept the landlord's evidence that two sub-tenants, in addition to two co-tenants, is inconsistent with the municipal bylaw;
- I find that the landlord has reasonable grounds to withhold consent for the tenants to have more than one sub-tenant at anytime;
- I accept the evidence of the tenant that all breaches, such as the removal of the RV vehicles have been complied with and that there are no longer any sub-tenants; and
- I accept that there was an agreement in writing that the landlord would only show the rental unit once a week with 24 hours written notice and the landlord has not upheld this agreement.

I find that the landlord has not satisfied the requirements of the *Act* to support the one month Notice to End Tenancy. At this point I agree with the submission of the tenant that any breaches to the tenancy agreement have been resolved after written notice. I find that the one month Notice to End Tenancy was premature and should be set aside.

The tenancy is reinstated and will continue with full force and effect. However, for clarification of my findings the parties are reminded of the following:

1. The landlord is only to show the rental unit once a week after providing 24 hours written notice;
2. The tenants are not allowed to have any more than one sub-tenant in compliance with the municipal bylaw and only after receiving further written authorization from the landlord consistent with section 34 of the *Act*;
3. The other co-tenant, who has vacated the rental unit without notice, remains on the tenancy agreement and remains jointly responsible for the obligations of the tenancy agreement until notice is given and the landlord agrees to remove the co-tenant from the tenancy agreement.

Conclusion:

The tenant's application is granted in part and the one month Notice to End Tenancy is set aside. The tenancy will continue with full force and effect. I have provided findings of fact respecting the obligations and responsibilities of the tenants and landlord arising from the tenancy agreement.

As the tenant was partially successful in application I Order that the tenant may recover the \$50.00 filing fee from the landlord by deducting this sum from the next month's rent.

Dated March 4, 2009.

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Dispute Resolution Officer