

# Dispute Resolution Services

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

## Decision

Dispute Codes: CNC, OC, FF

## Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order that the landlord comply with the Act. Both parties were represented in the conference call hearing and had opportunity to be heard.

## Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?

## Background and Evidence

The parties agreed that on May 12 the tenant was served with a one-month notice to end tenancy for cause. The cause alleged is that the tenant has assigned or sublet the rental unit without the landlord's written consent.

The landlord testified that the tenant provided a letter in early May advising that she would be subletting the rental unit to K.M. during her extended absence from the unit and a second letter requesting that the landlord approve a request to sublet. The landlord advised the tenant in writing that permission to sublet was not granted. The tenant responded with a third letter acknowledging that consent had been withheld and advising that K.M. would be a frequent guest in the rental unit and that during the tenant's absence would be watering plants in the unit. The landlord testified that K.M. has been seen at the rental unit frequently and stated that he was under the impression that K.M. had been residing in the unit since May 4.

K.M. appeared on behalf of the agent and testified that he lives just a few blocks away and has been coming to visit the tenant and, during her absence, to water plants. K.M. testified that because he and the tenant are in a relationship, he is a frequent guest. While K.M. had initially intended to sublet the rental unit while the tenant was gone,

when the landlord withheld approval, the tenant and K.M. decided that he would continue living in his own residence.

### Analysis

The landlord bears the burden of proving that there is cause to end the tenancy. I find that the landlord has failed to prove that K.M. is living in the rental unit. Although the circumstances were such that the landlord was reasonable to believe that the tenant may have been attempting to circumvent the landlord's denial of her request to sublet the unit, I find that the landlord has not proven on the balance of probabilities that K.M. is living in the rental unit rather than just visiting the tenant and looking after her plants. I order that the notice to end tenancy be set aside. As a result, the tenancy will continue.

I find it appropriate that the \$50.00 paid by the tenant to bring her application be borne equally by the parties. The tenant may deduct \$25.00 from future rent owed to the landlord.

### Conclusion

The notice to end tenancy is set aside.

Dated June 22, 2009.

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