



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, AS

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to cancel a Notice to End Tenancy issued for alleged cause, and to have the Landlord allow the Tenant to sublet the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Is the one month Notice to End Tenancy valid or should it be cancelled?

Is the Tenant entitled to an order compelling the Landlord to sublet the rental unit?

### Background and Evidence

This tenancy began on September 1, 1994, with the parties entering into a written tenancy agreement. The rental period indicated in the agreement is month to month. The agreement sets out that the Tenant must have the prior written consent of the Landlord in order to sublet.

In the early summer of 2005, the Tenant had an employment opportunity in another city in the province. She requested permission from the Landlord to sublet the rental unit.

On July 15, 2005, the Landlord approved in writing an application made by the Tenant to sublet the rental unit. The parties agreed, in a document separate from the tenancy

agreement, that, "... during the period August 15, 2005 to August 15, 2006 inclusive, [the subtenants] will be residing in the premises listed above" (the "Sublease"). At the time of this hearing, nearly four years later, the subtenants continue to occupy the rental unit.

The Landlord argued that the current rate of rent is well below market value for the location of the rental unit and that is the major reason they issued the Tenant a Notice to End Tenancy. There have been only a few rent increases for the rental unit over the 15 years of the tenancy. At the start of the tenancy the rent was set at \$630.00 and the current rent is \$746.00.

The Landlord submits that the Sublease was to only last one year, as set out in the document. The Landlord also submits that the Sublease must be for a period of time shorter than the original tenancy period.

Both parties agreed that there has been no problem with the subtenants and the Agent for the Landlord testified they would have no problem entering into a new tenancy agreement with the subtenants.

Since the Tenant would not agree to terminate the tenancy, the Landlord issued her a one month Notice to End Tenancy on January 20, 2010, with a stated effective date of February 28, 2010. The Landlord indicates the reasons for giving the Notice are that the Tenant has breached a material term of the tenancy agreement and that the Tenant has assigned or sublet the rental unit without the written consent of the Landlord.

The Tenant testified that she intends on returning to the subject rental unit, when she returns to university to complete a post graduate degree. She explained that when the Landlord approved the Sublease, there was no discussion about the length of time that the sublet would last. The Tenant also submitted in evidence a letter from the subtenants who wrote, "There was no mention of a time limit" when they met with an Agent for the Landlord to sign the Sublease. They state, as does the Tenant, that the major concern of the Landlord at that time was to have good tenants in the rental unit.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I **allow the Application of the Tenant and I order that the Notice to End Tenancy be cancelled.**

The Landlord had insufficient evidence to prove the Tenant has breached a material term of the tenancy agreement with the Landlord. The Tenant sought the prior written consent of the Landlord to sublet and it was given. The Landlord did not seek to end the sublet at the end of the first year and allowed it to continue for over three years before addressing the issue with the Tenant. This leads me to find the Notice was not issued for the true reason the Landlord wants the tenancy to end, which is by their own evidence, to increase the rent.

Policy guideline 19 deals with subletting and includes the statement,

It is not reasonable to withhold consent [for a sublet] and require a new tenancy agreement in order to increase the rent.

The Landlord did not exercise their right to use the provisions of the Act and regulation to increase the rent over the years, and is now trying to increase the rent by ending the tenancy and the Sublease. This is not the purpose of a Notice to End such as the one given to the Tenant. I find this was the purpose of the Landlord's Notice and therefore, it does not appear to have been issued in good faith and must be cancelled.

I note that if the Landlord wishes to raise the rent, there are provisions in the Act to do so, which include an Application for a rent increase beyond the statutory limit.

In regard to the argument of the Landlord that a sublease must be for a period of time shorter than the original tenancy period, this normally applies to fixed term tenancies, and not month to month agreements such as the parties have here.

Lastly, I find and order that the tenancy and Sublease shall continue until it is ended in accordance with the Act.

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: March 24, 2010.

---

Dispute Resolution Officer