

## **DECISION**

**Dispute Codes:** CNC

### **Introduction**

This application was brought by the tenant seeking to have set aside a one-month Notice to End Tenancy for cause - subletting part of the rental unit without the landlord's consent - dated March 12, 2010.

As a matter a matter of note, the Notice to End Tenancy erred in setting an end of tenancy date of April 12, 2010 while section 47(2) requires that it be at the end of the month following the next rent due date after service. The end date is automatically corrected to April 30, 2010 by section 53(2) of the Act.

### **Issues to be Decided**

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

### **Background and Evidence**

This tenancy began on October 1, 2009, although the tenant has resided in the rental unit since 2007 under a rental agreement between her brother, who was deceased in September 2009, and the landlord.

During hearing, the landlord submitted into evidence a Notice to End Tenancy issued by the tenant to another party, not her cotenant, dated January 5, 2010.

She also submitted Shelter Information documents in the name of two other parties, one dated October 28, 2009 and the other, March 2010, specific to the rental unit in question and in which the subject tenant is identified as the property manager.

The tenant stated that none of those parties currently reside in the rental unit and that it is currently occupied by her and her cotenant and her 14-year old nephew, and they have continued to occupy the rental unit throughout. She stated that she had wanted to have other occupants to assist with the rent but that none had worked out.

While there is an addendum to the rental agreement limiting the number of permanent tenants to two, the Notice to End Tenancy had not cited breach of a material term of the rental agreement.

## **Analysis**

The term “sublet” refers to a circumstance in which the tenant moves out of the rental unit and enters into a rental agreement with another party to assume the tenancy, with the tenant acting as landlord to the sub-tenant while retaining their obligations to their landlord.

In the present matter, the parties who had moved into and left the rental while the tenants remained in residence were “occupants” and not sub-tenants.

While the landlord held that having occupants breached a material term of the rental agreement, that cause was not stated on the Notice to End Tenancy. Similarly, the

landlord cited late payment of rent which, while included in the causes under which notice may be served, was not cited in the Notice to End Tenancy.

As a consequence, the tenant appeared at the hearing prepared to respond to the claim of sub-letting without consent but had not been given the opportunity to prepare a response to the claims of breach of a material term or late payment.

Therefore, I find that the Notice to End Tenancy of March 12, 2010 must be set aside and, if the landlord wishes to pursue the other matters, she must serve the tenants with notices specifically noting the breaches of the *Act* and/or rental agreement claimed and make a new application.

## **Conclusion**

The Notice to End Tenancy of March 12, 2010 is set aside and the tenancy continues.

May 6, 2010