



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

CNC

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated May 29, 2010 which purported to be effective June 30, 2010. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had assigned or sublet the rental unit/site without the landlord's written consent.

### **Issue(s) to be Decided**

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence are:

- Whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Act*, has been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

**Burden of Proof:** The burden of proof is on the landlord to establish that the notice was justified.

## **Background and Evidence**

A written tenancy agreement was originally signed nine years ago between the landlord and a couple who were two co-tenants, PB and MW. This was a month-to-month tenancy with current rent of \$800.00 and a security deposit was paid. The utilities were paid by the tenants and the accounts were under their names. Evidently some time ago PB and MW requested and received permission from the landlord to add two additional occupants to share the premises, SD/TK who resided in the lower unit and paid rent directly to the main renters, PB/MW. In late fall of 2009, the main renters, PB/MW had a family situation that was to require them to move temporarily to another area.

According to the landlord, there was a verbal agreement between the parties to permit SD/TK to occupy the unit for a period of time and pay rent directly to the landlord. The utilities would remain connected under the main renter's names and the possessions of PB/MW would remain in the unit until they returned to resume their former tenancy. PB/MW would pay SD/TK a portion of the rent until they moved back in.

The landlord's position was that they entered into a temporary tenancy arrangement with SD/TK with verbal terms that prohibited the tenants from "subletting", or renting any portion of the residence to any other person without the landlord's consent and with a proviso that the tenant was to return the tenancy back to the main renters, PB/MW, as soon as they returned from dealing with the family situation. The landlord stated that the substitute tenancy was not for any fixed term but was left open-ended in regards to the date that the main renters and sub-tenants would resume their former status with PB/MW as the tenants and SD/TK as only occupants who were to pay their rent to the main renters.

The tenant, SD/TK disputed the landlord's interpretation of the verbal agreement. SD stated that they became month-to-month tenants under a new agreement. The tenant challenged the claim that SD/TK would only be permitted to stay for a

fixed term that automatically would end when the former “main” tenants returned. SD/TK also disputed the landlord’s allegation that they had no right to allow an additional roommate to share in the cost of rent. The tenant SD stated that his own roommate, TK, had vacated because she could not tolerate living in the clutter left by PB/MW. SD stated that the arrangement with the landlord and main renters PB/MW was that SD/TK would take over the unit and that PB/MW had relinquished their tenancy altogether. According to SD, the agreement was that PB/MW could continue to store their possessions on site and pay the equivalent of \$150.00 per month until they returned to remove them. The tenant SD stated that there was no firm intention that PB/MW could take over on their return. In fact, according to the SD, the former renters PB/MW had advised that they did not intend on returning as tenants and had sent emails stating that they would be removing their belongings and disconnecting the phone and utilities under their names.

### **Analysis**

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable and also that the terms agreed to in a tenancy agreement are enforceable through dispute resolution. Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to disputes over

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that:
  - (i) are required or prohibited under this Act, or
  - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

In order to end a tenancy under section 47 for cause a landlord would need to prove that the tenant was in violation of either the Act or the tenancy agreement signed by the parties.

I find that the landlord had entered into a written tenancy agreement with PB/MW and these “main renters” had never relinquished their tenancy at any time, as evidenced by the fact that they left their belongings in the unit, retained the telephone land-line and hydro accounts under their names. I do not accept the applicant tenant’s position that PB/MW ceased to be tenants.

Once a tenancy agreement is made, the Act does not permit a landlord or a tenant to unilaterally impose additional terms or changes to an agreement. However, section 14 of the Act states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, if both the landlord and tenant both agree to the amendment.

I find that because of PB/MW’s need to leave temporarily, an amendment to the original agreement was made to permit the former occupants, SD/TK to take on the role of tenant. This was agreed to by PB/MW and was done with the landlord’s permission after which SD/TK began to pay rent directly to the landlord with the concurrence of all parties.

Therefore, I find there was not a totally new verbal tenancy agreement created between the landlord and SD/TK alone. I find that the original written agreement with PB/MW remained in place but now included the new co-tenants SD/TK as actual parties to the agreement rather than mere occupants or sub-tenants. \

In this regard I find that PB/MW and SD/TK are co-tenants and at the present time they all jointly share tenancy rights to the unit. The terms of this tenancy are contained in the written agreement signed by PB/MW and the landlord in 2000.

In regards to the landlord’s allegation that the co-tenants had “sublet” the unit to third parties, I find that this was a month-to-month tenancy and as such the issue of “sub-letting” would not be applicable. Subletting can only occur in cases where there is a fixed term tenancy, that being a written lease with an end date shown signed by the parties, and the tenant wants to vacate prior to the expiry date shown on the agreement. In such a circumstance, a tenant subject to a fixed term of tenancy would need to find another individual to sub-let and fulfill

the remainder of the fixed-term tenancy contract until it is expired. In this instance, I find that the landlord's reference to the unit being "sublet" was actually pertaining to the tenant's actions in bringing other sub-tenants or roommates to reside in the unit and share the premises as occupants.

I find that allowing additional occupants to move into the unit to share the premises does not fit the definition of "subletting" which is described as having an existing lease assigned by the tenant to a third person who will take over the lease for a shorter period than the original lease that the tenant has with the landlord. In this instance, because the tenancy was month-to-month and not a fixed term, SD could not possibly sublet the unit.

In regards to the landlord's objection to the tenant's actions in housing additional residents without the landlord's consent, I find that under the written tenancy agreement signed in 2000 by the tenant, there was no specific term that prohibited the tenant from sharing the unit or adding occupants without the landlord's consent. Therefore, as a co-tenant entitled to possession of the unit and a valid party of the tenancy agreement, SD was at liberty to do so.

While the Act does contain a provision that could be seen as a restriction against allowing additional occupants, this would only apply when the number of occupants actually created a health violation under section 32 of the Act.

I find that, if the landlord intended to restrict the number of occupants or intended that the tenant must get the landlord's consent prior to adding any additional residents, there would need to be a specific term in the tenancy agreement stating this and that is not the case here. Given the above, I find that the One-Month Notice to End Tenancy is not supported under the Act in the circumstances and must therefore be cancelled..

I have found that PB/MW and SD/TK are co-tenants and section 13 of the Residential Tenancy Guidelines provides some guidance in regards to the rights and responsibilities of co-tenants. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly

responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are also jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

In addition to the above, if any one of the co-tenants gives notice to end the tenancy, this functions to terminate the agreement for all of the co-tenants. Each one of the co-tenants would also individually and as a group assume all liability for damage, conduct issues or violations perpetrated by an occupant, room-mate or even by a visitor.

Based on the evidence and the testimony above, I find that the One-Month Notice to End Tenancy for Cause dated May 29, 2010, was not supported by sufficient proof to merit its enforcement. For that reason, I find that the tenant's application requesting that the Notice be cancelled will be granted.

### **Conclusion**

I hereby order that the landlord's One-Month Notice to End Tenancy for Cause dated May 29, 2010 be permanently cancelled and of no force nor effect.

The tenant is entitled to be reimbursed for the \$50.00 cost of this application and is ordered to reduce the next payment of rent owed to the landlord by \$50.00 as a one-time abatement.

July 2010

Date of Decision

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Dispute Resolution Officer