



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes AS, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order allowing her to assign or sublet the tenancy agreement because the Landlord's permission has been unreasonably withheld, and to recover the filing fee for the Application.

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.

I note the Tenant was interruptive in the later parts of the hearing and had to be cautioned regarding personal comments made about the Landlord.

### Issue(s) to be Decided

Has the Landlord's permission to assign or sublet the rental unit been unreasonably withheld?

### Background and Evidence

This tenancy began on October 1, 2010, with the parties entering into a one year, fixed term tenancy agreement. While neither party submitted the tenancy agreement has a typographical error showing the tenancy would end on September 30 "2010", it is clear the parties had agreed and have treated the agreement as intending to last until the end of September "2011". The monthly rent was set at \$1,950.00, and the security deposit was set at ½ month of rent. The tenancy agreement also contains a liquidated damages clause, providing the Tenant will pay the Landlord \$500.00 if the Tenant ends the tenancy before the end of the original term.

At the outset of the tenancy the Tenant requested that the Landlord allow her to keep her seven different pets in the rental unit and the Landlord agreed to this. The tenancy appears to have been relatively peaceful until recent events and there appears to be two or three instances when the Tenant was late paying rent.

In early May of 2011, the Tenant received news that her mother's cancer has returned. The Tenant contacted the Landlord and explained she would have to end the tenancy, as she is required to move to another province to look after her mother. The Tenant also had to find accommodations for her two children and life partner.

The Landlord and the Tenant had a meeting to discuss the Tenant leaving the tenancy early. Initially the Tenant informed the Landlord she would vacate the rental unit by the end of July 2011, and the Landlord explained she would not hold her liable for rent for August or September if she left in July, but would require the Tenant to pay the liquidated damages of \$500.00 to re-rent the subject unit. The Tenant is very upset that the Landlord is requiring her to abide by the liquidated damages clause in the Tenancy Agreement.

According to the evidence and testimony, the Landlord informed the Tenant that she was going to away for a short time, however, it appears the Tenant either forgot this or it was not communicated clearly. There was a significant amount of testimony and evidence from the Tenant regarding the Landlord being unavailable or not replying immediately to the Tenant's numerous email queries and voice mail requests.

In May the Tenant provided the Landlord with a letter informing the Landlord she was vacating the rental unit effective June 30, or July 1, 2011.

The Tenant testified extensively, and provided written submissions, that she feels the \$500.00 liquidated damages clause is unethical and immoral, in view of the illness of her mother and the Tenant's financial circumstances.

The Tenant advertised and tried to find other renters for the rental unit. The Tenant recommended two different potential renters for the Landlord.

The Landlord testified that her research indicates the income of one of these renters was about \$2,200.00 and she felt that renter could not afford the subject rental unit.

The Landlord further testified that the other renter had to move in no later than June 15, 2011, and as the Tenant would still be in possession of the rental unit for the month of

June, the Landlord was unsure the Tenant would leave by June 15 to allow the other renter to enter into a new lease with the Landlord.

In reply, the Tenant testified that an email she sent to the Landlord indicated she would leave the rental unit on June 15. The Tenant directed the Officer's attention to the email. I note the email actually states "I told them that I am happy to accommodate them if I can."

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, **I find that the Tenant's Application must be dismissed without leave to reapply.**

The onus to prove her case was on the Tenant. I found the Tenant presented insufficient evidence to prove her claim. I also found the Tenant's contradictory evidence regarding these circumstances brought her credibility into question. For example, in some emails the Tenant continually requests the Landlord treat her with respect and in an ethical manner, and in others the Tenant berates and chastises the Landlord because of the vehicle the Landlord drives and the home in which she lives. The Tenant's emails to the Landlord are often demeaning and inflammatory, yet the Tenant also seeks to use the Landlord as a reference. The Tenant continually suggested in emails and in her testimony that the Landlord is acting in an indecent or unethical manner, despite the agreed upon fact that the Tenant is breaching the tenancy agreement and section 45 of the Act herself. I also note throughout the hearing and her correspondence there is no indication from the Tenant that she has accepted any responsibility for her breach of the agreement or of the Act.

I find the Tenant has failed to prove the Landlord has been unreasonable in refusing to agree to sublet or assign the tenancy agreement to the two potential renters put forward by the Tenant. In order to be "unreasonable", the Landlord must be shown to have acted arbitrarily or has no reason not to accept the potential renters. I do not find that was the case.

In this circumstance the testimony and evidence indicates the Landlord had reasonable grounds not to accept the potential renters. In one instance, the Landlord spent time and effort investigating the financial ability of the one of the renters, including investigating student loans, and found it to be unlikely the renter could afford the rent. In the other instance, the Landlord is unable to grant possession of the rental unit on the date required because the Tenant is still in possession of the unit. Given that the Tenant has admittedly failed to follow the tenancy agreement and the Act, and has

changed the dates she is vacating the rental unit several times, I find the Landlord acted in a prudent manner since she could have been susceptible to claims from a new renter if she could not provide the rental unit due to the Tenant still being in possession.

Therefore, I find the Tenant provided insufficient evidence to prove her claim, and her Application is dismissed without leave to reapply.

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: June 14, 2011.

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Residential Tenancy Branch