



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, AS

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for cause and for an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld.

An agent for the landlord company and the tenant both attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. The landlord also called a witness. The tenant provided an evidence package to the Residential Tenancy Branch and to the landlord which was not received within the time provided in the *Act* or the Rules of Procedure, but the landlord did not oppose the inclusion of the evidence. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
- Is the tenant entitled to an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld?

### Background and Evidence

The landlord testified to purchasing the rental unit on October 1, 2010 and inherited the tenant as a result of that purchase. The tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. The landlord testified that the statement of adjustments did not include a security deposit collected by the landlord, and as such, the landlord has not collected a security deposit or a pet damage deposit from the tenant, and no

written tenancy agreement existed. The rental unit is one of 9 apartments in an apartment building, and the landlord only owns this particular unit.

The landlord further testified that when the landlord purchased the rental unit the tenant had a room-mate. When that room-mate moved out the tenant got another room-mate.

The landlord attempted to have the tenant sign a tenancy agreement in December, 2010, and again sometime in late 2011. The landlord asked the tenant again in January, 2012 and the tenant ultimately signed a tenancy agreement, a copy of which was provided for this hearing. The tenancy agreement was signed by the landlord on January 23, 2012 and by the tenant on January 25, 2012. There is not an addendum to the agreement.

In March, 2012 the tenant asked the landlord if another room-mate could move in and the landlord agreed as long as the landlord was able to do a credit check on the room-mate, that the room-mate was employed, and that the room-mate could be added to the tenancy agreement as an occupant. The tenant told the landlord that the room-mate would not sign a tenancy agreement. Then between March 15 and 23, 2012 the landlord saw a motorcycle, a green truck and several empty moving boxes at the rental unit as well as a dog. The landlord gave the tenant a letter dated March 24, 2012 by placing it in the mail slot on March 24, 2012.

On March 26, 2012 the tenant called the landlord and stated that the room-mate was the tenant's boyfriend and the landlord asked the tenant to put that in writing, but the tenant didn't do so. The parties exchanged notes, the final one being a letter from the landlord to the tenant accompanied by a 1 Month Notice to End Tenancy for Cause, which was served by putting it through the mail slot in the door of the rental unit. The accompanying letter from the landlord to the tenant states that the landlord had not received written confirmation from the tenant that the person the tenant is sub-letting to had not vacated, and a note from the tenant stated that the tenant intended to keep the room-mate, and therefore the notice to end tenancy is attached.

The landlord's witness is the girlfriend of the landlord, who testified to witnessing the letters from the landlord to the tenant being placed through the mail slot of the rental unit.

The tenant testified that the landlord was the tenant's friend prior to purchasing the rental unit, and the landlord was well aware that the tenant could not afford the rent without a room-mate. The landlord had subsidized the tenant's rent by paying a portion

of it to the previous landlord. The landlord has since acquired a girlfriend who wants to be a property manager and the landlord told the tenant that the tenant was a guinea pig.

The tenant further testified that the landlord threatened to evict the tenant if the tenant didn't sign the tenancy agreement. Further, since the landlord has acquired a girlfriend, the landlord has issued numerous letters and eviction notices; the landlord would phone the tenant to let the tenant know what was coming and now the landlord is not allowed to talk to the tenant.

The tenant had a room-mate when the landlord bought the rental unit. When the room-mate moved out, the landlord subsidized the tenant's rent and encouraged the tenant to get another, which the tenant did. That room-mate moved in on March 26 and moved out on April 10, 2012. The room-mate's dog remained at the rental unit longer, but the room-mate now resides elsewhere in the neighbourhood and the dog is still seen around the property. The tenant also provided a copy of the notice to end tenancy which sets out the reasons for issuing the notice, and states: Tenant has assigned or sublet the rental unit/site without landlord's written consent.

During the course of the hearing, the parties were read the definitions of assigning and subletting as set out in the Residential Tenancy Policy Guideline, and the tenant withdrew the application for an order permitting the tenant to assign or sublet because the landlord's permission has been unreasonably withheld.

### Analysis

Firstly, for the benefit of the parties, a landlord cannot evict a tenant for not signing a tenancy agreement. The *Residential Tenancy Act* states that a tenancy agreement exists even if it is not put in writing, and that agreement contains standard terms. Therefore, landlords' and tenants' rights and responsibilities exist whether or not a written agreement exists.

The *Residential Tenancy Act* also deals with assigning and subletting a rental unit, which states as follows:

**34 (1)** Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

The Residential Tenancy Branch publishes Fact Sheets and Policy Guidelines to assist landlords and tenants with residential tenancy disputes. The parties were read the definitions contained in Policy Guideline #19 during the course of the hearing, and I refer to that Policy Guideline which sets out the definitions of assigning and subletting:

“Assignment is the act of transferring all or part of a tenant’s interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. In a manufactured home site tenancy, an assignment usually coincides with the sale of the manufactured home.

“The assignee takes on the obligations of the original tenant commencing at the time of the assignment, and is not responsible for actions or failure of the assignee to act prior to the assignment. Unless the landlord agrees otherwise, the original tenant may retain some residual liability, in the event of a failure of the assignee to carry out the terms of the tenancy agreement or lease.

“A sublease is a lease given by the tenant or lessee of the residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.”

In this case, I find that the tenant has not assigned or attempted to assign or sub-let the rental unit to another person, and therefore, the reason for ending the tenancy contained in the notice to end tenancy is not a valid reason.

### Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

The tenant's application for an order permitting the tenant to assign or sublet because the landlord's permission has been unreasonably withheld is hereby dismissed as withdrawn by the tenant.

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: May 24, 2012.

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Residential Tenancy Branch