



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC

### **Introduction**

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on May 8, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on May , 2013. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issue to be decided is whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated May 8, 2013?

### **Background and Evidence:**

The tenant moved into the rental property approximately 20 years ago. He has lived in this rental unit since approximately 1999. The present rent is \$625 per month payable on the first day of each month.

The landlord testified the tenant has subletted the rental unit. She testified that she talked to one of the tenant's sub-tenant and that person confirmed that he had rented

the rental unit to her. That sub-tenant is no longer living in the rental unit. The landlord testified that in addition she has seen other people who told her they were the tenant's friends and they were living in the rental unit. On May 2, 2013 the tenant left a message for the landlord to the effect he was not able to find someone to rent the premises and that he was moving out. The tenant contacted the landlord a short time later and stated he had changed his mind and was not going to move out.

The tenant testified he has lived and continues to live in the rental unit. He stated that over the last year he has travelled off and on and friends have lived in the rental unit for the time he was away in order to take care of his cat. He acknowledged the friends have contributed to the payment of the rent. However, he stated he has paid the rent when due and his furniture remains in the rental unit. When he has come home from travelling he has returned to the rental unit and the friends have left. He also acknowledges that he has spent some time at his girlfriends house but he denied that he has sub-let the rental unit during that period.

#### Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(i) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

Policy Guideline #19 includes the following:

### **19. Assignment and Sublet** Jan-04

#### **Assignment**

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 assignor 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.

### **Subletting**

A sublease is a lease given by the tenant or lessee of 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 subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve the last day or some period of time at the end of the sublease, the agreement amounts in law to, and will be treated as, an assignment of the tenancy.

### Analysis

After hearing the disputed evidence of the parties I determined the landlord has failed to prove that the tenant has sub-letted or assigned the rental unit. The landlord alleged that a sub-tenant confirmed that she was residing in the rental unit. However, that person did not testify at the hearing, did not provide any evidence in the form of a letter or affidavit and is no longer living there. I determined the explanation of the tenant that he had friends house sitting and taking care of his cat while he travelled was plausible. In my view such a relationship is not a sub-let as the tenant was able to terminate their residence immediately upon his return.

**As a result I determined the landlord has failed to establish sufficient cause to end the tenancy. I ordered that the one month Notice to End Tenancy dated May 8, 2013 be cancelled.** The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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 12, 2013

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Residential Tenancy Branch