



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, AS, FF

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for authority to assign or sublet the rental unit; and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside and is there is a need for an Order authorizing the Tenant to sublet the unit?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2012; that they have a written tenancy agreement; and that the tenancy agreement specifies that only the persons listed on the tenancy agreement are entitled to occupy the rental unit unless authorized in writing by the Landlord.

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause, dated May 31, 2013, was served to the female Tenant, which declared that the Tenant must vacate he rental unit by June 30, 2013. The reasons for ending the tenancy cited on the Notice to End Tenancy are that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time and that the Tenant has assigned or sublet the rental unit without written consent.

The Landlord stated that he is attempting to end this tenancy because the Tenant has a foster child living with them who is not named on the tenancy agreement and that he

has not provided the Tenant with verbal or written permission to have the additional occupant, as is required by the tenancy agreement. He stated that he has verbally informed the Tenant that the child cannot live at the rental unit but he has not provided the Tenant with written notice that the child cannot live in the unit.

The Landlord and the Tenant agree that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause in April of 2013, in which the Landlord attempted to end the tenancy because there were too many people occupying the rental unit. The Landlord stated that he believes the Notice to End Tenancy that was served to the Tenant in April should have served as written notice that he did not want the child in the unit.

The Tenant stated that they have a foster child living with them on a temporary basis; that the child is thirteen years of age; that they do not know how long the foster child will be staying with them; that they did not anticipate having a foster child when this tenancy began; that the person living above them told them the foster child could live with them; that the person living above them is the person who collects their rent; that neither the Landlord nor an agent for the Landlord has given written permission to have a foster child living in the unit; and that the Landlord has never informed the Tenant, in writing, that the foster child could not live in the unit.

The Tenant stated that when the parties discussed the tenancy the Landlord understood that the male Tenants children would periodically be staying with them in the rental unit. The Landlord stated that he did understand there would be children staying in the unit for a few days at a time, he did not agree to have a third party live in the unit on a full-time basis.

### Analysis

A material term of a tenancy agreement is a term that is so important that one party can end the tenancy if the other party breaches the term of the tenancy agreement. Paying rent when it is due is one example of a material term of a tenancy agreement. As this tenancy agreement clearly specifies that only the persons named on the tenancy agreement can occupy the rental unit without the written consent of the Landlord, I find it reasonable to conclude that this was a material term of the tenancy agreement. As the undisputed evidence shows that the Tenant has not obtained the Landlord's written consent to have a third occupant in the rental unit, I find that the Tenant has breached a material term of the tenancy agreement.

Section 47(1)(h) of the *Act* stipulates that a landlord may end a tenancy if there is a breach of a material term of a tenancy agreement that has not been corrected within a reasonable time after the landlord has given written notice to do so.

Although I accept that the Landlord has verbally informed the Tenant that they cannot have a third party occupy the rental unit, the undisputed evidence is that the Landlord has not provided the Tenant with written notice that he considers the presence of the third party to be a breach of a material term of their tenancy agreement; that the third

party must stop occupying the rental unit; and that the Landlord will end the tenancy if the third party continues to occupy the rental unit. In my view, the Landlord does not have the right to end the tenancy until he provides the Tenant with this written notice. As the requisite written notice has not yet been provided, I find that the Landlord is not yet entitled to end this tenancy pursuant to section 47(1)(h) of the *Act*.

When determining this matter I do not accept the Landlord's argument that the Notice to End Tenancy for Cause he served in April should have served as written notice that the third party must move out of the unit. In my view serving a Notice to End Tenancy for having too many people occupying the rental unit is not the same as informing the Tenant they are in breach of a material term of the tenancy agreement.

In an attempt to provide both parties with some clarity in regards to this tenancy, both parties are advised that the Landlord may now provide the Tenant with written notice that he considers the presence of a third party to be a breach of a material term of their tenancy agreement; that the third party must stop occupying the rental unit within a reasonable time of that notice being served; and that the Landlord will end the tenancy if the third party continues to occupy the rental unit. In the event that the third party does not move out of the rental unit within a reasonable amount of time of receiving that written notice, the Landlord retains the right to serve the Tenant with another One Month Notice to End Tenancy for Cause.

To provide further clarity to this tenancy, I find that in these circumstances, the Landlord must wait at least six weeks after serving the aforementioned written notice before he can serve the Tenant with another One Month Notice to End Tenancy. Given that this dispute relates to housing a foster child, I find that six weeks is a reasonable amount of time for the Tenant to find alternate accommodations or to make arrangements to end the foster parenting agreement.

Section 47(1)(i) of the *Act* authorizes a landlord to end a tenancy if the tenant purports to assign the tenancy or sublet the rental unit without obtaining written consent from the landlord.

Assigning a tenancy agreement involves 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. A sublease is a lease given by the tenant to a third person. A sublease conveys substantially the same interest in the land as was held by the original tenant. Assigning or subletting is entirely different than allowing a third party to occupy a rental unit, particularly if the Tenant remains in the rental unit.

As there is no evidence to suggest that the Tenant intends or wishes to assign or sublet this tenancy to the foster child or any other party I find that the Landlord does not have the right to end this tenancy pursuant to section 47(1)(i) of the *Act*.

As there is no evidence to suggest that the Tenant intends or wishes to assign or sublet this tenancy to the foster child or any other party, I dismiss the application for authorization to assign or sublet the rental unit.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they currently have grounds to end this tenancy pursuant to sections 47(1)(h) or 47(1)(i) of the *Act*, I grant the application to set aside the One Month Notice to End Tenancy, dated May 31, 2013, and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I authorize the Tenant to deduct \$50.00 from one rent payment as compensation for the filing fee paid for this Application for Dispute Resolution.

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: July 09, 2013

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Residential Tenancy Branch