



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC

### 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.

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, to call witnesses, and to make relevant submissions.

The Advocate for the Tenant and Legal Counsel for the Landlord agree that they mutually agreed to accept documents related to this matter via email.

The Advocate for the Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were emailed to Legal Counsel for the Landlord. Legal Counsel acknowledged receipt of the documents and I therefore conclude that the documents have been sufficiently served, pursuant to section 71(2)(b) of the *Residential Tenancy Act (Act)*.

The Tenant submitted documents to the Residential Tenancy Branch on October 11, 2013. The Advocate for the Tenant stated that copies of these documents were emailed to Legal Counsel for the Landlord on October 11, 2013. As Legal Counsel acknowledged receipt of the documents, I conclude that the documents have been sufficiently served, pursuant to section 71(2)(b) of the *Act*, and I accept them as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch on October 11, 2013. Legal Counsel for the Landlord stated that copies of these documents were emailed to the Advocate for the Tenant on October 15, 2013. As the Advocate acknowledged receipt of the documents, I conclude that the documents have been sufficiently served, pursuant to section 71(2)(b) of the *Act*, and I accept them as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on October 17, 2013. The Advocate for the Tenant stated that copies of these documents were emailed to Legal Counsel for the Landlord on October 17, 2013. Legal Counsel acknowledged receipt of the documents on October 17, 2013 however he argued they should not be accepted as evidence because they were not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure. The Advocate for the Tenant argued that the documents emailed to Legal Counsel on October 17, 2013 should be accepted because they are relevant to the issues in dispute and because the evidence was only two days late. The Advocate stated that the evidence was late because she was having difficulty converting the photographs into a format that could be emailed to the Landlord.

Rule 11.5(b) of the Rules of Procedure stipulates that I may refuse to accept evidence if there is a willful failure to comply with the *Act* or the Rules of Procedure. I find that the delay in serving this evidence was related to the Advocate for the Tenant's decision to serve evidence via email, albeit with the agreement of the Legal Counsel for the Landlord, which required her to alter the format of the photographs before they could be served in this manner. This is not a service method authorized by the *Act*. I find that the evidence could likely have been served on time if the Tenant opted to deliver the photographs to the Landlord by a service method authorized by the *Act*. I therefore refuse to accept this evidence.

In refusing to accept the evidence, I was influenced, in part, by the fact that all of this evidence should have been available to the Tenant well before the hearing date and that it could have been served within the timelines established, with reasonable diligence.

In refusing to accept the evidence, I was influenced, in part, by the fact that the photographs provided to the Residential Tenancy Branch are of very poor quality and are, therefore, of little evidentiary value.

In refusing to accept the evidence, I was influenced, in part, by my determination that the evidence is not particularly relevant to the reasons the Landlord is attempting to end the tenancy, with the possible exception of the photographs.

#### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, be set aside?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2008 and that rent of \$625.85 is currently due by the first day of each month.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was placed under the door of the rental unit. Legal Counsel for the Landlord stated that the Notice was placed under the door by a process server on September 27, 2013 and the Tenant stated that she located it on that date. The Notice declared that the Tenant must vacate the rental unit by October 31, 2013.

The reasons for ending the tenancy selected on the One Month Notice to End Tenancy are stated for the Notice to End Tenancy are that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and that the tenant has assigned or sublet the rental unit without written consent.

Legal Counsel for the Landlord argued that the tenancy should end because the male Respondent is living in the rental unit and the Tenant has not obtained written permission to sublet the rental unit, as is required by section 9 of the tenancy agreement that was signed by the parties on January 15, 2008. The one page signed tenancy agreement was submitted in evidence, as was 5 pages of a 6 page tenancy agreement.

Advocate for the Tenant argued that the rental unit has been neither assigned nor sublet. She stated that the male Respondent is an occupant of the rental unit who has been living there at the invitation of the Tenant.

Legal Counsel for the Landlord argued that the tenancy should end because the Tenant has breached section 3 of the one page tenancy agreement, which identifies only one occupant for the rental unit.

The Advocate for the Tenant argued that the Landlord has known the male Respondent was living in the rental unit; that the Landlord's conduct waives the Landlord's right to end the tenancy on the basis of this breach; and that the Landlord has not provided the Tenant with written notice to correct the breach.

The Landlord is seeking to end this tenancy, in part, because the police executed a search warrant at the rental unit in May of 2013. A copy of the search warrant was submitted in evidence, which indicates the premise was to be searched to obtain evidence in support of a murder investigation, and that the police were attempting to recover a variety of items, including a handgun and firearms associated accessories, trace evidence, and evidence of drug tracking. The Landlord submitted no evidence that shows evidence was located at the rental unit or that anyone associated to the rental unit was arrested in regards to this investigation. Legal Counsel stated that the Landlord is very concerned for the safety of his granddaughter who is living in the rental unit.

The Advocate for the Tenant argued that nobody associated to the rental unit was arrested in regards to this investigation. The male Respondent stated that he has spoken with the police and was told that no drug paraphernalia was located; no trace evidence was located; and that some ammunition that was not related to the murder investigation was located. He stated that he was told the unit was searched because someone was "missing".

The Tenant stated that she does not know why the rental unit was searched; that she originally believed the searched related to her son; and that she later learned that three other units in the residential complex were searched.

The Agent for the Landlord stated that she does not believe other units in the residential complex were searched, but she understands that the occupants of some other units were asked to vacate so the police could complete their forensic investigation.

The Advocate for the Tenant stated that the Landlord has thoroughly cleaned the rental unit, thereby repairing any damage caused to the unit as a result of the police search. The female Witness for the Tenant stated that she cleans homes and job sites professionally; that she spent over a week cleaning the rental unit; that the rental unit had been sprayed with a toxic substance by the police; that after attempting to unsuccessfully cleaning the rental unit she painted the unit and refinished the floors; and that the rental unit has been fully repaired.

The Witness for the Landlord stated that he is not certain if the rental unit has been properly repaired, as he has not inspected the unit. Legal Counsel for the Landlord does not allege that damage resulting from the police search has not been repaired.

The Advocate for the Tenant contends that the Landlord did not have a right to end the tenancy as a result of the search that was conducted in May of 2013, as the parties subsequently agreed to continue the tenancy if the damage caused by the police was repaired by the Tenant.

The male Witness stated that a few days after the police searched the rental unit in May of 2013 he spoke with the Landlord, with the assistance of the Witness for the Landlord, who acted as a translator. He stated the parties agreed that the Landlord would not end this tenancy as a result of the police search if the Tenant repaired the damage caused to the unit by the police search and if the Witness for the Tenant and his brother agreed not to return to the rental unit. He stated that the Landlord nodded his consent to the agreement and that he shook hands with the Landlord and the Witness for the Landlord.

The Witness for the Landlord stated that he did have a discussion with the male Witness for the Tenant after the police searched the rental unit; that the male Witness wanted access to the rental unit; that the male Witness was denied access as the police had posted a notice saying the rental unit needed to be cleaned; that the male Witness called the Tenant during this conversation and she participated in the conversation via speaker phone; that the Tenant was told she could not move back into the unit until it

was professionally cleaned; that there was no agreement that the Landlord would not evict the Tenant as a result of the police search; and that he does not recall anyone shaking hands.

The Tenant stated that she participated, via speaker phone, in the conversation between the male Witness for the Tenant and the Witness for the Landlord and she overheard the parties agree that the tenancy would continue if she paid to repair the damage to the rental unit. She stated that she would not have paid \$1,500.00 to repair the damage if she did not believe the tenancy would continue.

The Landlord is seeking to end this tenancy, in part, because there has been an increase in criminal activity around the residential complex since the Tenant moved into the rental unit. The Landlord submitted a letter from a couple who live across the street, in which they report ongoing problems with "drug dealers and their buyers" for the past 4-5 years. The authors declare that the activity revolves around the suites above the store and in the stairwell leading to the suites.

The Advocate for the Tenant argued that the letter from this couple does not connect the drug activity to the rental unit; that all the units in the residential complex use the stairs; and that the Tenant or the male Respondent does not use drugs; and that no guests of the Tenant sell drugs.

The Agent for the Landlord stated that only two other suites in the residential complex are occupied; that they have lived in the residential complex since 1993 or 1995; that the problems with drug activity increased after the Tenant moved into the rental unit; and that concerns about the drug activity have never been discussed with the Tenant.

The Witness for the Landlord stated that he has discussed the drug activity with the male Witness for the Tenant but he has never discussed it with the Tenant.

### Analysis

Residential Brach Policy Guidelines define 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. The assignee takes on the obligations of the original tenant commencing at the time of the assignment. I concur with this definition. As there is no evidence that the Tenant has transferred her rights and obligations under the tenancy act to the male Respondent, I find that the tenancy has not been assigned to him.

Residential Brach Policy Guidelines define a sublease as a lease given by a tenant or lessee of residential premises to a third person. A sublease conveys substantially the same interest in the rental unit as is held by the original lessee, however is generally for a shorter period. The original lessee remains the tenant of the original lessor and is the landlord of the sub-tenant. I concur with this with this definition and I can find no reason to conclude that the Tenant has sublet this unit to the male Respondent.

Residential Brach Policy Guidelines define an occupant as a person who is not a tenant whom the tenant allows to move into the premises. The occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant. I concur with this definition. As the Tenant has acknowledged that the male Respondent is living with her at her invitation, I find that he is an occupant.

Section 47(1)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant purports to assign the tenancy agreement or sublet the rental unit without the written consent of the landlord. As the Landlord has failed to establish that the Tenant has sublet the rental unit or assigned the tenancy, I find that the Landlord does not have grounds to end this tenancy pursuant to Section 47(1)(i) of the *Act*.

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if the tenant has breached a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Section 52(d) of the *Act* stipulates that to be effective a notice to end tenancy must state the grounds for ending a tenancy, except for a notice under section 45(1) or 45(2) of the *Act*. I find that if the Landlord wished to end this tenancy on the basis of section 47(1)(h) of the *Act*, the Landlord had an obligation to clearly inform the Tenant of that intent, by selecting "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so" as one of the reasons to end the tenancy on the Notice to End Tenancy. As the Landlord did not indicate this was one of the reasons for ending the tenancy on the Notice, I find that the Landlord does not have the right to argue that this tenancy should end on that basis.

Although the issue of ending the tenancy pursuant to section 47(1)(h) is not before me, I note that it would be highly unlikely for me to conclude that a tenant has breached a material term of a tenancy agreement simply because the tenant permitted a third party to move into the rental unit, unless this issue was specifically addressed in the tenancy agreement. I find this to be particularly true in circumstances where there is room to name more than one occupant on the tenancy agreement. I address this issue simply to provide some direction or clarity to the parties. It is not binding on any future proceedings nor does it prevent the Landlord from attempting to end the tenancy on this basis if the Landlord does not concur with this opinion.

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; or has put the landlord's property at significant risk. I find that the Landlord has insufficient evidence to end this tenancy pursuant to Section 47(1)(h) of the *Act*.

In reaching this conclusion I was heavily influenced by the absence of evidence to show that the police located any evidence of criminal activity during this search or that the

Tenant or a guest of the Tenant has been arrested in regards to the murder investigation. Although I accept that police attendance can be disconcerting for neighbors, I am also cognizant of the possibility that the police suspicions were unfounded. I am also cognizant of the possibility that the rental unit was searched because the person associated to the rental unit was the victim, rather than the perpetrator, of the crime or is only peripherally associated to the incident. I am also cognizant of the possibility that even if someone associated to the rental unit was involved in, or is associated to, this murder, there is no evidence that that the murder happened at, or near, the rental unit and therefore there is no evidence that the neighbors were at risk or were disturbed by this criminal act.

I do find that it is reasonable for the Landlord or neighbors to be concerned that someone who is associated to a rental unit that is the subject of a search of this nature may be involved in serious criminal activity. I note, however, that the *Act* does not authorize a landlord to end a tenancy simply on the basis that a tenant is a criminal. If that were the case, a good percentage of the population would be unable to secure housing. A landlord only has the right to end a tenancy if the criminal activity unreasonably disturbs other occupants or the landlord; seriously jeopardizes the health or safety or lawful interest of another occupant or the landlord; or puts the landlord's property at significant risk. It would be very rare for me to end a tenancy on the basis of criminal activity that occurs offsite.

In reaching this conclusion I was influenced by the absence of evidence to show the police are attending this rental unit on a regular basis or that the Tenant has failed to repair damage to the rental unit that occurred as a result of this isolated incident.

Although it is largely irrelevant, I find that the Tenant has submitted insufficient evidence to establish that the Landlord agreed not to end this tenancy as the result of the police search if the Tenant repaired the damage caused by the search. When two parties dispute that an oral agreement has been made the onus of proving that oral agreement rests with the party attempting to rely on the agreement. I find that the Tenant has submitted insufficient evidence to cause me to conclude that this agreement was made.

Although the testimony of the male Witness for the Tenant regarding the agreement is corroborated by the Tenant, who is his mother, I find that this testimony is not particularly compelling, as it is obviously self serving.

Given the language barrier and the need for a translator when the male Witness for the Tenant and the Landlord allegedly reached this agreement, I find it entirely possible that the male Witness for the Tenant believed they had reached an agreement and the Landlord did not believe they had reached an agreement. This is one of the reasons a written agreement is more reliable.

In considering the oral agreement I have placed limited weight on the undisputed fact that the Tenant paid to have the rental unit cleaned/painted. On the basis of the testimony of the female Witness for the Tenant, it appears that the unit required

significant cleaning/repair and it is reasonable to conclude that the Tenant would make those repairs before occupying the rental unit even if an agreement had not been reached, assuming the Tenant did not wish to vacate the rental unit.

In determining that the Landlord has insufficient evidence to end this tenancy pursuant to section 47(1)(h) of the *Act*, I find that the Landlord has submitted insufficient evidence to show that the increase of drug activity in the area is related to the rental unit. In reaching this conclusion I was heavily influenced by fact that the couple who complained about the increased drug activity do not declare that the drug activity is associated to this particular unit and by the absence of another tenant in the residential complex that associates the drug activity to this unit.

I was also influenced by the absence of evidence to show that the Landlord spoke with the Tenant regarding the increased drug activity in the residential complex. While I accept that the Witness for the Landlord spoke with the Tenant's son, that is not the same as speaking with the Tenant. In my view, it would be reasonable to at least speak with the Tenant if the Landlord believed that the increased drug activity is related to her rental unit, which would then give her the opportunity to intervene if she, or a guest if her unit, were disturbing others.

### Conclusion

As the Landlord has failed to establish grounds to end this tenancy, I grant the application to set aside the Notice to End Tenancy for Cause, dated September 27, 2013.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 23, 2013

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Residential Tenancy Branch



