



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC, FF

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated June 22, 2014, a copy of which was submitted into evidence. The Notice indicated that the reasons for terminating the tenancy were that the tenant had assigned or sublet the rental unit without the landlord's permission.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Should the One Month Notice to End Tenancy for Cause be cancelled?

### **Background and Evidence**

The burden of proof is on the landlord to justify the Notice.

The tenancy began in November 2013 and the rent is \$1,200.00. The rental unit is a four-bedroom dwelling shared by co-tenants.

Submitted into evidence was one page of what the landlord stated was the tenancy agreement. However the rest of the agreement with identifying factors, such as the names of the tenants, signatures, and other key terms of the agreement was not in evidence.

A copy of the One Month Notice to End Tenancy for Cause is in evidence and indicates that the landlord is terminating the tenancy based on the reason below:

*“The tenant has assigned or sublet the rental unit/site without landlord’s written consent”*

The landlord stated that the tenants had sent him a note stating that a new occupant “*will be residing in our unit*” and the landlord pointed out that this is not allowed under the tenancy agreement without first getting the landlord's written permission and adding the new occupant to the tenancy agreement as a co-tenant.

The landlord testified that he considers this situation to be an illegal sublet or assignment, because it was done without the landlord’s permission. The landlord's position is that this is a valid basis to terminate the tenancy and the landlord requests that the tenant’s application be dismissed and that an Order of Possession be issued in favour of the landlord..

The tenant testified that the person who was to reside in the unit did not take occupancy and has since left. The tenant pointed out that they had never sublet the unit to a third party nor assigned their lease to anyone else. The tenant testified that they believe that they are entitled to have guests under the Act.

The tenants seeks to cancel the One Month Notice to End Tenancy for Cause.

### **Analysis**

I find that, the co-tenants have remained in possession of the unit and never transferred their contract to anyone else.

### **Assigning or Subletting**

With respect to the landlord’s allegation that the tenant had sublet or assigned the rental unit, I find that the Residential Tenancy Guideline offers some helpful definitions.

An 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 all obligations of the original tenant commencing at the time of the assignment, but is not responsible for actions or failure of the original tenant to act prior to the assignment.

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 sub-agreement.

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 an assignment of the tenancy and will be treated as such.

In this instance I find that the person who was occupying the home had apparently been a guest of the tenant at their invitation. If this is so, then this individual would not have any of the tenancy rights or responsibilities reserved to the existing tenants. .

I find that under section 30 (1) of the Act, a landlord is not allowed to unreasonably restrict access to residential property by:

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Section 28 of the Act also protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Given the above, I find that the landlord does not have any statutory nor contractual right to restrict the tenant's guests.

Section 5(1) of the Act states that the Act cannot be avoided through contract and that any attempt to avoid or contract out of the Act or the regulations is of no effect.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if:

- (a) the term is inconsistent with the Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that the tenant is free to manage his home as he sees fit and utilize the rental property for any purpose they desire, unless specifically limited or prohibited by the law, the Residential Tenancy Act or a valid and compliant term of the tenancy agreement.

Although a complete copy of the tenancy agreement is not in evidence, I find that this agreement does impose a clear restriction with respect to new occupants, requiring that they must be added to the tenancy agreement as co-tenants after being approved by the landlord.

The tenancy agreement states that this is a material term of the tenancy. I find that this tenancy term does not violate the Act, and may therefore be enforced through arbitration if violated, provided the landlord does attempt to apply the term to guests.

Based on the evidence, I find that the tenants have not sublet the rental unit nor assigned their interests to a third party. Therefore, the One-Month Notice to End Tenancy for Cause is not adequately supported by evidence.

I find that, because the landlord has not sufficiently met their burden of proof that the tenancy must be terminated under the Act, the 1-Month Notice must therefore be cancelled.

I hereby order that the One Month Notice to End Tenancy for Cause dated June 22, 2014 is cancelled and of no force nor effect.

I find that the tenant is entitled to be reimbursed the \$50.00 cost of the application and I order that the tenant deduct this amount from the next rental payment to the landlord as a one-time abatement.

### **Conclusion**

The tenant is successful in the application and the One-Month Notice to End Tenancy for Cause is cancelled.

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: August 27, 2014

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Residential Tenancy Branch

