



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO CORE REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, OPT, AS, FF

### Introduction

This matter dealt with an application by the Tenant for the Landlord to comply with the Act, regulations or tenancy agreement, for an Order of Possession for the Tenant, to allow the Tenant to sublet the rental unit and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") through his lawyer by personal delivery on August 19, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

During the course of the hearing it was discussed that the Landlord had issued a 1 Month Notice to End Tenancy for Cause based on the Tenant's request to sublet. The Notice to End Tenancy is dated August 26, 2014 and has an effective vacancy date of September 30, 2014 on it. Both Parties requested that the 1Month Notice to End Tenancy for Cause be included in this hearing. The Tenant requested his application be amended to include a request to cancel the Notice to End Tenancy for Cause. The Landlord agreed to the amendment. I accept the Tenant's amendment request to his application.

### Issues(s) to be Decided

1. Has the Landlord Complied with the Act, regulations or tenancy agreement?
2. Is the Tenant entitled to an Order of Possession?
3. Is the Tenant entitled to sublet the rental unit?
4. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy agreement was signed on July 22, 2014 and the tenancy was to start on August 7, 2014 and to continue up to the expiry date of March 1, 2016. Rent is \$4,500.00 per month payable on or before the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$2,250.00 was paid on July 17, 2014.

The Tenant said he is living in a different rental unit in the same rental complex and the existing tenancy is coming to an end as of October 31, 2014. As a result the Tenant said he completed a tenancy agreement on the new rental unit so that he could move out of the existing unit into the new unit. The Tenant continued to say he made a decision not to move into the new unit immediately so he pursued a sublet option. The Tenant said when he approached the Landlord verbally with the sublet request on August 5, 2014 the Landlord declined his request. The Tenant said he then emailed the Landlord with the sublet request on August 6, 2014 and had his lawyer write the Landlord on August 7, 2014 about the request to sublet. The Tenant said the Landlord would not respond to his request to sublet and then on August 7, 2014 when the tenancy was to begin the Landlord would not give the Tenant the key to the rental unit nor give the Tenant access to the unit. The Tenant said he has filed this application to get an Order of Possession and to be allowed to sublet the rental unit. The Tenant continued to say that he is now also requesting the Notice to End Tenancy for Cause to be cancelled.

The Landlord said the Tenant has been a good tenant in the existing unit, but the Landlord believes the Tenant has misrepresented himself for the new tenancy agreement. The Landlord said the Tenant was trying to sublet the unit before he moved in and he did not get the Landlord's written approval to sublet the unit. The Landlord said he would not have rented the unit to the Tenant if the Tenant had told him he was thinking of subletting the unit. The Landlord said he believes the Tenant is trying to profit on the new rental unit as the Tenant said he would make \$500.00 each month by subletting the unit. The Tenant said he did not sublet the unit and he was not trying to make money by subletting the new unit. As a result of these discussions between the Landlord and the Tenant the Landlord issued a 1 Month Notice to End Tenancy for Cause with the reasons that the Tenant breached the tenancy agreement by assigning or subletting the unit without the Landlord's written consent. The Notice to End Tenancy was dated August 26, 2014 with an effective vacancy date of September 30, 2014. The Landlord said he wants to end the tenancy and if the tenancy agreement is cancelled he will return the Tenant's security deposit.

The Landlord called his witness D.S. The Witness D.S. said that he believed that the Tenant had hired a local realtor to show the rental unit for him to sublet it. The Witness said he gave the Landlord a copy of the shift log and photographs that show the realtor in question was showing the unit in the building with prospective tenants. The Witness D.S. said the realtor used his fob to gain access to the rental unit. The Witness D.S. said another employee at the rental complex saw the realtor and a prospective tenant sign some paper that he thought was a tenancy agreement. That witness was not available for testimony, but the Landlord provide a copy of an email of the shift log with an entry saying the realtor had rented the rental unit in question. The Tenant said he knew nothing about this and he had not signed a rental agreement and he did not know anything about a sublet tenancy agreement. The Tenant said he had not sublet the rental unit.

The Landlord said in closing that the Tenant misrepresented his intentions about renting the unit, the Tenant did not provide any information about subletting and the Landlord did not give his written consent to a sublet situation. As well the landlord said on August 5 when the Tenant verbally requested to sublet the Landlord said he could handle the sublet directly so that the new tenant would meet the Landlord's criteria. The Landlord said this was not done. The Landlord continued to say he believes the Tenant was renting the unit to re-rent it as a commercial business because the Tenant said he would make \$500.00 per month on the rental. The Landlord ended by saying if the tenancy agreement is cancelled he will return the Tenant's security deposit back with no questions.

The Tenant said in closing that he has a tenancy agreement/contract in place and the Landlord will not give him the keys and possession to the rental unit. As well the Tenant said he is requested to sublet the unit but it is not sublet at the present time. The Tenant said he is requesting the Landlord to comply with the Act and the tenancy agreement and give him possession of the unit and honor the tenancy agreement.

### Analysis

**Section 16 of the Act says:** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

From information on the tenancy agreement this tenancy was entered into and signed by the parties on July 22, 2014. Consequently all rights and obligations of both the Landlord and the Tenants were in full effect as of that date. There was much discussion about the Tenant inquiring about subletting the rental unit, but there is no documented proof that the Tenant actually sublet the rental unit. The witness that allegedly saw the paper work that the realtor and a potential sublet tenant had did not give testimony; therefore the testimony that was given by the other witness was just hear say and I do not accept it as the content of the paper work was not been proven. In addition no sublet tenancy agreement was submitted into evidence and no sublet tenants occupied the rental unit as the Landlord did not give the Tenant the keys or possession of the unit. Consequently I conclude that a sublet situation was not completed. Therefore the Landlord has not met the burden of proof required to prove the reasons on the Notice to End Tenancy dated August 26, 2014. The Landlord's 1 Month Notice to End Tenancy for Cause dated August 26, 2014 is canceled.

Further I order the Tenant and the Landlord to comply with the Act regulations and tenancy agreement negotiations with respect to subletting the rental unit. With respect to the Tenant's application to "allow him to sublet the rental unit". I find the Tenant can make an application in writing to the Landlord to request a sublet situation and the Landlord is bound to review it and if reasonable the Landlord is obligated to accept it. The acceptance of the sublet tenant by the Landlord is based on the same criteria that the Landlord uses for other tenants that he accepts to the rental complex. Consequently I find the Tenant is at leave to make application in writing to the landlord for a sublet situation. As well the Tenant should include all details that are required by the Landlord with that application.

With respect to the Tenant's application for the Landlord to comply with the Act, regulations or tenancy agreement and for an Order of Possession: I find the tenancy agreement is in full effect and the Landlord has not met his obligation under that agreement. I order the Landlord to give the Tenant the keys to the rental unit and full possession of the unit immediately. I have issued an Order of Possession to the Tenant effective immediately on service of that Order on the Landlord.

As the Tenant has been successful in this matter I order the Tenant to deduct or have the Landlord refund \$50.00 from the October, 2014 rent payment to the Tenant.

### Conclusion

The Tenancy is ordered to continue as stated in the Tenancy Agreement dated July 22, 2014.

An Order of Possession effective immediately after service of it on the Landlord has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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: September 08, 2014

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Residential Tenancy Branch

