



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, AS

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a Notice to End Tenancy issued for alleged cause and for an order that the Landlord allow the Tenant to sublet the rental unit.

Both parties appeared at the hearing. The Landlord was represented by legal counsel, an Articled Student. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The parties explained they have been to one prior hearing regarding an Application by the Landlord to end the tenancy earlier than the tenancy would end if the Landlord issued a Notice to End Tenancy. The Landlord was unsuccessful in that Application.

The Tenant had to be cautioned on two occasions regarding making inappropriate comments about the Landlord's legal counsel. The Tenant was directed to limit his testimony to that required to dispute the Notice to End Tenancy.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Should the Landlord be ordered to allow the Tenant to sublet the rental unit?

## Background and Evidence

On or about September 4, 2014, the Landlord served the Tenant with a one month Notice to End Tenancy for cause alleging that the Tenant had allowed an unreasonable number of occupants in the rental unit; that the Tenant or a person permitted on the property by the Tenant had significantly interfered with or unreasonably disturbed another occupant or the Landlord, or, had seriously jeopardized the health, safety or lawful right of another occupant or the Landlord; and that the Tenant has assigned or sublet the rental unit without the Landlord's written consent (the "Notice").

In accordance with the rules of procedure under the Act, the legal counsel for the Landlord (hereinafter referred to as the "Agent") provided their evidence first regarding why the Notice was issued.

The Agent explained that the tenancy had begun on June 1, 2014, with the parties entering into a written tenancy agreement with a fixed term of three years. The monthly rent is \$2,600.00. The Landlord submits that the rental unit consists of 12 rooms, and that the Tenant was renting 10 of those rooms. The other two rooms are rented by other tenants of the Landlord.

The first argument of the Agent was that the Tenant had sublet the rental unit without the prior consent of the Landlord. The Agent argued that under section 34 of the Act and section 9 of the tenancy agreement, the Tenant is not allowed to sublet or assign the rental unit without the prior written consent of the Landlord.

The Landlord supplied a letter from a neighbour who lives next door to the rental unit and the neighbour writes in their letter that in July of 2014 they witnessed seven people who were not the Tenant or his family moving items into the rental unit. The neighbour writes that it looks like two families have moved into the rental unit.

The Agent also pointed out a written statement in the Tenant's evidence that sets out:

"The landlord permits me to sublet to ease my financial difficulty. On account of the above mentioned health and medical needs, I request the landlord to allow me to sublet certain rooms."

[Reproduced as written.]

The neighbour also writes about disturbances caused by the occupants of the subject rental unit, who are apparently not the family of the Tenant. The neighbour writes that he has spoken with one of two of these people and he alleges that one of the occupants is involved with illegal drugs. The neighbour also writes about police attendances at the rental unit. The neighbour writes that he has heard one of the occupants muttering threats about wanting to harm someone.

The Landlord alleges that the property management company he hired to look after the rental unit property has refused to attend the subject rental unit as they allege it is dangerous.

The Landlord alleges that one of the two renters the Landlord had in place before the Tenant rented the rest of the building has ended his tenancy with the Landlord due to the Tenant's occupants. The Agent explained that the Tenant or the occupants have three dogs and two of these are pit bulls. The Landlord alleges that there was a police attendance due to the dogs attacking someone at the property.

The Landlord further alleges there have been about 10 police attendances at the property. In evidence the Landlord has submitted a copy of a police report indicating that the Landlord reported there was damage done to the rental unit in August of 2014.

The Landlord also alleges that the Tenant has changed the locks on several doors in the rental unit to those with a push button pad, requiring a pass code to unlock the doors, and has not provided the Landlord with these codes. The Agent alleges that this is a breach of section eight of the tenancy agreement and section 31 the Act.

In reply, the Tenant denied all these claims and questioned the veracity of the Landlord.

The Tenant denies that he is subletting and he states that he, his wife and son are the only ones living in the subject rental unit.

The Tenant alleges that the Landlord did not inform him of the two renters already in the rental unit at the time he was looking at the rental unit.

The Tenant testified that he has already given the combination code for the door locks to the property management company used by the Landlord. The Tenant testified that he had to change the locks as many expensive things were going missing in the rental unit.

The Tenant submits that the Landlord has overcharged him for a pet damage deposit. I note the tenancy agreement indicates the Landlord has charged \$2,600.00 which should have been \$1,300.00, as the maximum amount of a pet damage deposit is one half a month of rent.

The Tenant was also upset that the Landlord has made the Tenant put the utilities in his name, and he has to pay for the two renters of the Landlord and then collect their portion from the Landlord.

The Tenant testified that he wants the tenancy continue but was upset that the Landlord has caused him so much stress. The Tenant submitted evidence that he has had heart surgery, and that there are repairs that were needed to the rental unit.

The Tenant alleged that the police attended the rental unit because someone else had claimed the dogs had attacked them. The Tenant testified that there were no injuries. The Tenant explained that he requested that the Landlord erect a fence in the backyard so he could let his dogs out. The Tenant was upset that the Landlord tried to collect half of the cost from him for this fence.

The Tenant also denied that he has asked the Landlord to allow him to sublet.

The parties agreed that the Landlord had not performed a written incoming condition inspection report, and this is required under the Act.

In reply, the Agent submitted that the Landlord had paid the Tenant the share of utilities for the Landlord's other renters.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has insufficient evidence to prove the Notice should be cancelled, and I find that the Landlord has proven one of the causes, and therefore I dismiss the Application of the Tenant without leave to reapply. The Agent requested an order of possession in favour of the Landlord as the Tenant was unsuccessful in his Application.

I find that the Notice is valid, as on a balance of probabilities, I find the Tenant sublet the rental unit without the prior written consent of the Landlord. I base this on the Tenant's own written submission that the Landlord permitted him to sublet to "ease his financial difficulty", and the written statement of the neighbour next door advising he saw people other than the Landlord and his family, moving into the rental unit in July.

I also found it somewhat contradictory that the Tenant would deny he asked the Landlord to sublet, yet in his Application it is clear the Tenant is requesting an order to allow him to sublet as the Landlord has unreasonably withheld permission to do so.

I also could not accept that the Tenant has changed locks in the rental unit on certain rooms due to alleged thefts, if the only people living in the subject rental unit are the Landlord and his family.

For all of the above reasons, and on a balance of probabilities, I find it is more likely than not that the Tenant has sublet rooms without the prior written consent of the Landlord.

As I have found one cause to be valid, I need not address the other causes listed in the Notice.

Having made the above findings, I dismiss the Tenant's Application without leave to reapply.

As the Tenant's Application was dismissed, Legal Counsel for the Landlord requested an order of possession to take effect at the end of November, which is the period the rent has been paid for. Pursuant to section 55 of the Act, I must grant that request.

I grant and issue an order of possession to be effective **at 1:00 p.m. on November 30, 2014**, in favour of the Landlord.

However, I also note that the Landlord must abide by the Act when dealing with the security deposit and pet damage deposits at the end of the tenancy.

### Conclusion

I find the Tenant has sublet without the Landlord's prior written consent. The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the Act, the Landlord is issued an order of possession for the rental unit effective at 1:00 p.m. November 30, 2014.

The Landlord is cautioned to deal with the security deposit and pet damage deposit in accordance with the Act at the end of the tenancy.

This Decision and order are final and binding on the parties, except as otherwise provided for by the Act. 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: November 04, 2014

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Residential Tenancy Branch

