



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both tenants and the landlord and his wife.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in her Application for Dispute Resolution.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by both parties on May 1, 2014 for a 17 month fixed term tenancy beginning on May 1, 2014 for a monthly rent of \$1,450.00 due on the 1<sup>st</sup> of each month with a security deposit of \$710.00 paid.

During his testimony, however, the landlord stated that the tenancy originally began with just the male tenant and that it was not until May 2015 that the female tenant was added to the tenancy. The landlord could not explain why the tenancy agreement showed the female tenant as a signatory to the original tenancy agreement signed in 2014.

The tenants provided no further clarity on the matter but did confirm the tenancy agreement signed was the standard agreement found on the Residential Tenancy Branch website with an addendum.

Clause 8 of the standard tenancy agreement states: The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. The same

clause states that if the landlord unreasonably withholds consent to assign or sublet the tenant may apply for dispute resolution under the *Act*.

The parties agree that sometime in May 2015 the female tenant approached the landlord seeking permission to rent out the rental unit while they were away to pay for a trip to Europe. The parties also agree the landlord denied the tenants' request and the tenants applied for dispute resolution with the Residential Tenancy Branch.

A hearing was scheduled and conducted on June 17, 2015. Neither of the tenants attended that hearing. As a result of the tenants' failure to attend that hearing the tenants' Application was dismissed without leave to reapply.

The tenants explained that they were in Europe at the time and the female tenant had attempted to call into the hearing using "Skype" but had some technical difficulties and could not get through and then ran out of access time and could not obtain more. The tenants did not, at any time, file an Application for Review Consideration seeking a new hearing.

Despite the landlord's denial of permission to sublet or assign the tenants advertised the rental unit on a short stay website and had 4 "sub tenants" rent the unit for the periods June 4 to 7; June 11 to 14; June 29 to July 2; and July 16 to 19.

The landlord was informed by another occupant in the residential property that there was water leak coming from the tenants' rental unit. In accessing the rental unit the landlord discovered that the tenants had gone ahead and rented the unit to other people and he issued a 1 Month Notice to End Tenancy for Cause on June 17, 2015 with an effective vacancy date of July 31, 2015 citing the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord testified that he sent the Notice to the tenants by registered mail on June 17, 2015. The tenant confirmed she received the registered mail on June 21, 2015.

### Analysis

Section 34(1) of the *Act* stipulates that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit. In addition, the tenancy agreement signed by both parties did include clause 8 stipulating the requirement for the tenant's to obtain the landlord's permission in writing.

Based on the testimony of both parties I find the landlord refused to provide permission to the tenants to sublet the rental unit for any period of time. I also find the tenants' applied to have the matter heard by an Arbitrator but without waiting for the hearing the tenants sublet the rental unit to two different renters.

I further find that the tenants then failed to pursue their Application for Dispute Resolution to obtain authority to sublet and received the landlord's Notice to End Tenancy prior to subletting the rental units to two more separate renters.

As a result, I find that at no time did the tenants have the landlord's written permission to sublet the rental unit as is required under both the terms of the tenancy agreement and Section 34 of the *Act*.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34.

As such, as the tenants did not have authority to sublet the rental unit by way of written permission from the landlord or by an order from an Arbitrator with the Residential Tenancy Branch, I find the landlord had authority pursuant to Section 47 to end the tenancy.

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply. As such, I note the tenants must vacate the rental unit accordance with the 1 Month Notice to End Tenancy for Cause issued on June 15, 2015.

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, 2015

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Residential Tenancy Branch

