



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Harob Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      CNC, OLC, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, an order compelling the landlord to comply with the Act and a monetary order. Both parties participated in the conference call hearing.

At the outset of the hearing, the tenant advised that she had a witness with her. I asked the tenant to have the witness step out of the room until it was time to receive her testimony. It was not necessary to hear from the tenant's witness as her evidence could not refute the landlord's evidence.

The tenant advised at the hearing that she had faxed evidence to the Residential Tenancy Branch the day prior to the hearing. As of the time the hearing had begun, that evidence had not yet been processed by the Branch. Section 3.18 of the Residential Tenancy Rules of Procedure provides that I can adjourn a hearing to consider evidence I have not received if the party submitted that evidence in accordance with the Rules. As the tenant did not comply with the Rules in submitting her evidence, I have not considered that evidence and did not adjourn the hearing.

The tenant requested an adjournment during the hearing, stating that she had only received the landlord's evidence, which was a copy of the tenant's advertisement on a accommodation rentals website (the "Website") a week prior to the hearing. The tenant claimed that in response to the landlord's evidence, she would have provided a copy of her account statement for the Website which she claimed would have showed that she never offered her unit for rent but said she did not have time to submit that evidence as the Rules prevented her from submitting last minute evidence. She did not allege that the evidence faxed the day before included this evidence. I denied the request for an adjournment. The tenant knew when she filed her application for dispute resolution on July 10 that the primary issue to be discussed at the hearing was whether she had sublet her rental unit on the Website. The tenant had ample opportunity to provide this evidence and knew or should have known that proof showing whether she had advertised the unit would be critical. As the tenant's own lack of due diligence led to the request for adjournment and as the landlord was anxious to end the tenancy and an adjournment would have the effect of extending the tenancy.

### Issues to be Decided

Should the notice to end tenancy be set aside?  
Is the tenant entitled to a monetary order as claimed?  
Should the landlord be ordered to comply with the Act?

### Background and Evidence

The parties agreed that the tenancy began in May 2015 and that on July 2, the landlord served the tenant with a one month notice to end tenancy for cause (the "Notice"). The Notice alleged that the tenant has illegally sublet the rental unit without the landlord's written consent and that she has engaged in illegal activity which has or is likely to affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord or has jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testified that in June, he conducted an inspection of the rental unit after having given the tenant 24 hours' notice of entry and that upon entering the unit, he found a family in the unit. The landlord testified that other occupants of the building had reported that they had observed unknown people had entered the rental unit using a key. The landlord checked the rental advertisements on the Website and discovered that the tenant had listed the unit for rent. The landlord provided a copy of the advertisement, which provided photographs of the inside of the unit and the outside of the building and contained a description of the unit as well as a photograph of the tenant. The Website showed that a number of parties had reviewed the accommodation, each one of which identified the tenant by name and stated that they had rented the suite.

The landlord further testified that his insurance plan provided that the insurance company could deny claims arising as a result of a commercial enterprise being conducted from the residential building. The landlord stated that if one of the tenant's clients caused damage, it was very possible that the claim for compensation would be denied by the insurance company. He further testified that he had concern about the safety of other occupants of the building when he had no control over who had access to the building.

The tenant adamantly denied having sublet the rental unit. She acknowledged that she had used the Website, but claimed that she used it to communicate with prospective roommates as she was concerned about living alone on the first floor of the building. She testified that she had used the Website to help a friend who was advertising another suite, but that she had never used the Website for the purpose of subletting the rental unit. When asked why the Website contained photographs of the unit and reviews with her name, she insisted that a previous employee of the landlord had posted advertisements on the Website and that the landlord had manufactured evidence by combining reviews from another suite with the photographs of this suite.

The tenant provided letters from friends who wrote that she had not sublet the unit and the tenant stated that her witness would testify to this effect as well. The tenant also provided a letter from a woman who stated that she had visited the tenant as a guest with her family and the tenant stated that this was the family who the landlord encountered in June when he conducted an inspection.

The tenant seeks compensation for loss of quiet enjoyment during the tenancy. The tenant testified that the landlord put up signs announcing that her unit would become the office as of July 15. The tenant testified that after July 15, she received numerous request from tenants for maintenance, laundry cards and other issues and that tenants knocked on her door as early as 6:00 a.m. and into the evening seeking the landlord's representative.

The landlord testified that because the tenant was concerned about her safety living on the first floor, he had arranged to move her to a second floor unit and use her unit as an office. He testified that when he discovered she was subletting the unit, it was determined that the tenant would not be moved to a new unit and steps were taken to end the tenancy as the landlord has a zero tolerance for subletting. The landlord testified that he took down the signs after the weekend and noted that the tenant had retained all of the letters and the laundry cards and accompanying payments that she had received.

The tenant acknowledged that she and the agent had arranged for her to move to an upper floor but insisted that the disturbance lasted for approximately 10 days and that the signs had remained up for at least that long. The tenant acknowledged that she had retained all of the letters and money which had been delivered to her during that period by occupants who mistakenly believed her unit was the new office. She stated that she had done so on the advice of counsel.

## Analysis

When a tenant disputes a notice to end tenancy, the landlord has the burden of proving that they have grounds to end the tenancy. I find that the landlord has met that burden. Although the tenant claimed that she was using the Website as a form of social media to connect with friends who she invited to her home as guests, because she also used the Website as a means to advertise on behalf of a friend, it is clear that she knew that the purpose of the Website was to connect prospective tenants with prospective landlords. The advertisement contains the tenant's photograph, photographs of the property and unit and contains an introduction to the tenant, complete with a photograph. There is nothing in the posting in which the tenant claims to be greeting long lost friends or seeking a roommate; rather, the posting specifically states that the tenant is "renting an extra bedroom".

The tenant claimed that the landlord's previous employee had advertised units on the Website, but provided no evidence to corroborate this claim and I find it unlikely that this was the case. I do not accept that the landlord manufactured the advertisement for the unit. The document is coherent, with items relating to each other, the reviews mention her by name and specifically state that she interacted with the guests and several of the reviews suggested that the guests and the tenant had met each other for the first time upon their arrival to the unit. The reviews also refer specifically to the guests picking up keys, which has persuaded me that the tenant provided keys to the guests, giving them access to the building.

I find that the tenant knowingly and deliberately advertised and sublet the rental unit for short-term accommodation without the landlord's written consent. I find that the tenant has violated her obligations under the Act and the tenancy agreement and I find that the landlord has established grounds to end the tenancy. I therefore dismiss the claim to set aside the Notice.

The landlord asked that the tenancy end on September 30, 2015 while the tenant asked that the end of tenancy be delayed until October 31, 2015 as she required additional time to find alternate accommodation. As the tenant has had several months' notice that her tenancy would be ending and as I find that her actions placed the other occupants of the building at risk as unsupervised, unknown persons had free access to the building, I find it appropriate to end the tenancy on September 30, 2015. The tenant should vacate the rental unit no later than 1:00 p.m. on that date.

Turning to the tenant's monetary claim, the tenant bears the burden of proving that the landlord has breached the Act, that she suffered a compensable loss as a result and that she acted reasonably to minimize her losses.

The parties agreed that there was a plan in place to move the tenant to an upper floor on July 12 and that the rental unit would become the building office. The landlord was reasonable in posting signs to give occupants advance notice that the office would be moving. The tenant claimed that the signs remained up for 10 days while the landlord claimed they were removed after approximately 5 days. I have found that the tenant was untruthful with respect to subletting

the unit and because of this, where the testimony of the tenant and the landlord conflict, I prefer the evidence of the landlord. I find it more likely than not that the landlord removed the signs after 5 days, particularly as there was no advantage to the landlord to continue to direct occupants to the rental unit when the tenant was taking their messages and money and not passing them on to the building manager.

I accept that the tenant suffered some disturbance during this period, but I find that to some extent, she was the author of her own misfortune as she knew or ought to have known that the landlord would end her tenancy when he discovered that she was subletting the unit. Had the tenant not sublet the unit and been moved to an upper floor, these disturbances would not have occurred.

Further, I find that the tenant failed to act reasonably to minimize her losses. The tenant submitted into evidence copies of some of the letters she received, one of which was from an occupant who stated that he had mistakenly given her his laundry card and would like it returned to him. Rather than returning the letters and cards to their owners or passing them along to the landlord, the tenant chose to retain those items, prompting further disturbance as the owners attempted to retrieve them.

I find that the disturbance experienced by the tenant was due in part to her own actions, was relatively short in duration and did not approach a level of disturbance which would attract compensation. I therefore dismiss the monetary claim.

### Conclusion

The tenant's claim is dismissed in its entirety. The tenancy will end on September 30, 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: September 15, 2015

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Residential Tenancy Branch

