



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC CNC AS OPT FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause; and
- b) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Act for orders as follows:

- c) To cancel a Notice to End Tenancy for cause;
- d) To obtain an Order of Possession for the Tenant pursuant to section 54;
- e) To obtain consent to sublet pursuant to section 34 of the Act as the landlord's permission has been unreasonably withheld; and
- f) To recover the filing fee pursuant to section 72.

### **SERVICE:**

Both parties attended and the tenant agreed she received the Notice to end Tenancy dated July 6, 2015 posted on the door. However both parties said they served their respective Applications for Dispute Resolution by posting them on the doors and texting. I find that the Applications were not legally served according to section 89 of the Act to obtain a monetary order or to have the Notice set aside but the landlord's Application was served legally to obtain an Order of Possession according to section 89(2) of the Act.

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

The tenant was issued a Notice to End Tenancy dated July 6, 2015 for cause. Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession?

Or is the tenant entitled to any relief?

**Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant sold this home to the present landlord and she was subletting part of it at the time she entered into a fixed term tenancy agreement for one year from July 17, 2014 to July 16, 2015. Now it is a month to month tenancy, rent is \$3000 a month and a security deposit of \$1500 was paid. The landlord said in the hearing and also in a document in evidence that they consented to the tenant subletting part of the property provided she remained in residence. However, this was not put in writing in the tenancy agreement and the tenant said she misunderstood the terms or limitation of consent. Her letter in evidence contends that she has always sublet part of the property. The tenant said she sublet her unit in the summer for two months and left the property but she is now residing there again. She is a teacher. She said this was her usual practice and the landlord knew she sublet when they entered into the sale agreement.

The tenant said she needed to do this for financial reasons and she had sublet to two men who were hard working with good references. She said the landlord basically wants her to leave because they think they should get more rent. She said she believed that subletting according to her usual practice was fine as the landlord had not objected to her subletting part of the property before.

**Analysis:**

This was a difficult hearing; when I pointed out that the tenant was no longer subletting her unit without consent as she had moved back into it, the landlord started arguing about rent and another property the tenant owned. The landlord became very loud in the hearing and refused to listen to me or the other party. The hearing was discontinued at that point.

I find the weight of the evidence is that the tenant had a reasonable belief that she had the landlord's consent to sublet as she was subletting part of the property since she sold the property to the landlord. I find the landlord agreed to this understanding in the hearing but said the problem was that the tenant had sublet her own unit for the summer so was not residing in the property herself at that time. I find this was for a short period of time, was due to her belief she had consent and she is now residing there. She said in the hearing that this issue would not arise again until next summer. I find some evidence that the tenant's contention of an ulterior motive for ending the tenancy may be correct as the landlord began arguing vehemently about the amount of rent when it appeared he was not going to be successful in the hearing. I find insufficient evidence that the tenant was subletting this summer without the landlord's consent.

The tenant was cautioned that if she sublet again without **written** consent of the landlord, her tenancy could be ended, according to section 34 of the Act. The provision that the landlord must not unreasonably withhold his consent only applies to fixed term tenancies of 6 months or more (section 34(2)). As she has a month to month tenancy, this section would not apply to her situation.

I set aside the Notice to End Tenancy dated July 6, 2015 as there is insufficient evidence that the tenant did not have the landlord's consent to sublet her unit as well as the other portion of the home at the time she sublet. I find the landlord had given permission to sublet some of the home from the outset of the tenancy and there is insufficient evidence that the landlord had restricted this permission by only allowing the tenant to sublet if she remained on the property.

I find the tenant not entitled to further permission to sublet without her presence on the property.

**Conclusion:**

I set aside the Notice to End Tenancy dated July 6, 2015. The tenancy is continued. I find neither party is entitled to recover their filing fees as they were unsuccessful. I dismiss the Application of the tenant due to lack of legal service without leave to reapply.

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 16, 2015

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Residential Tenancy Branch

