



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MND, FF

### Introduction

This hearing was scheduled to deal with cross applications. Before me was a Tenant's Application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a Landlord's Application for an Order of Possession for unpaid rent; and, a Monetary Order for unpaid rent and damage to the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

For reasons provided later in this decision, I have found the parties do not have a sub-lease to which the Act applies. However, since this decision deals with cross applications, meaning there are two sets of applicants and two sets of respondents, for ease of reference I have referred to the tenant of the subject rental unit as "tenant" and the tenants of the entire residential property as "head tenants".

At the commencement of the hearing the tenant was not present. Approximately five minutes after the hearing commenced the tenant connected to the teleconference call. The tenant appeared to be confused and he stated that he was somehow connected to the teleconference without entering the passcode. After a few minutes the tenant requested that the hearing be postponed as he had to make an important telephone call to his eye doctor. The head tenants were not agreeable to adjourning the hearing and I did not consider adjourning the matter further. The tenant stated that he needed only a few minutes to speak with his doctor on an urgent matter. I called a recess with instructions for the parties to call back in at 2:00 p.m. At 2:00 p.m. the head tenants were present and the tenant called in at approximately 2:02 p.m. and the hearing continued.

It should also be noted that the tenant was cautioned several times during the hearing to stop interrupting me while I was speaking, speaking out of turn, and making irrelevant

submissions. The tenant appeared to have great difficulty with complying with my instructions. I asked if the tenant had an impairment that would contribute to his inability to focus on my instructions. The tenant stated that he was tired from being up all night.

The head tenants submitted that they served the tenant with their Landlord's Application and hearing documents in person on February 29, 2016 and that the head tenants witnessed the service of documents upon the tenant. The tenant was uncertain as to when he received the Landlord's Application. Initially, he stated that it was received in late March 2016 and later he testified it was received in early March 2016. The head tenants indicated they could call the person who served the tenant as a witness. I found it unnecessary to hear from the witness as the tenant confirmed receipt of the Landlord's Application.

I determined that the Tenant's Application that was before me had not been served upon the head tenants. Rather, the head tenants were served with a Tenant's Application set for hearing on October 4, 2016. I determined that the tenant had filed two applications with the Branch (both file numbers are referred to on the cover page of this decision). The first was to dispute a 10 Day Notice and the second application indicated the two issues: dispute of the 10 Day Notice and a monetary claim. According to the tenant and Branch records the two issues identified by the tenant were merged on to one application. According to the tenant and the head tenants they were of the understanding the tenant's Application would be heard on October 4, 2016; however, according to Branch records the October 4, 2016 hearing was cancelled with the tenant's consent. The tenant claims he did not request cancellation of the October 4, 2016 hearing.

Since the head tenants are seeking an Order of Possession pursuant to a 10 Day Notice and the tenant had filed an Application seeking to cancel a 10 Day Notice I was satisfied that both parties considered the 10 Day Notice to be under dispute. However, the head tenant's request for an Order of Possession was scheduled for this date and it would be highly prejudicial to make the head tenants wait until October 4, 2016 to determine whether the 10 Day Notice issued in February 2016 should be upheld or cancelled. Accordingly, I informed the parties that I would proceed to consider the head tenant's request for an Order of Possession and the tenant's request that I cancel the 10 Day Notice so that a decision regarding the fate of this tenancy may be made in a timely manner.

I proceeded to hear from the parties with respect to the terms of tenancy, payment of rent and service of a 10 Day Notice to End Tenancy. During the hearing I orally communicated certain findings that the tenancy has ended for unpaid rent; however,

upon further review of the written submissions before me and consideration of the facts of this case, I find it imperative to further analyse whether the parties have a tenancy relationship to which the Act applies as opposed to a shared living or roommate arrangement. My authority to resolve disputes is provided by the Act. Accordingly, it is limited to residential tenancy agreements between a landlord and a tenant for the right to possess a rental unit and for me to resolve any other dispute would be outside of my jurisdiction. Accordingly, I have further considered whether the Act applies to the parties and whether I have jurisdiction to resolve this dispute.

### Issue(s) to be Decided

Do the parties have a tenancy to which the Act applies or some other form of shared living arrangement or roommate arrangement?

### Background and Evidence

The head tenants are tenants of the residential property and that they claimed to have their landlord's permission to sub-let rooms in the property; however, I was not given any documentary evidence of such permission. The tenant also questioned whether the head tenants had obtained such permission.

The head tenants and the tenant did not execute a written agreement although the parties were in agreement that the tenant was initially required to pay "rent" in the amount of \$465.00 per month, including utilities. Then the rent was reduced to \$350.00 per month in October 2015 because another roommate moved in.

The parties also provided consistent testimony that the parties did not set a fixed date for tenant's sub-tenancy to end or otherwise discuss that the tenant would be required to return possession of the rental unit to the head tenants before their tenancy ends. Both parties appeared to have entered into this arrangement on the basis the tenant entered a month to month tenancy.

I also heard that the female head tenant (referred to as AC) and the tenant have a child together who also lives in the residential property with them; however, AC and the respondent are not in a relationship and have separate bedrooms. Nevertheless, AC contacted the tenant's parents when his rent was not paid and the tenant's paid the outstanding rent to AC.

I noted that included in the head tenants' evidence package is a document entitled "House Hold Rules" (herein referred to as the Rules). I heard that the Rules are posted

in the residential property for all to see. I note that some of the Rules include the following:

- If you have a girlfriend/boyfriend you must be in a close relationship minimum 5 months before they are allowed in Private areas of house & inform roommates.
- You must inform roommates in advance if going into private area of home with Guest.
- No eating other roommates food

[reproduced as written]

Also included in the head tenant's submissions were several emails and letters written by the daughter of AC and the tenant; other occupants of the residential property; among other people. In some of the letters, the tenant and other occupants of the residential property are referred to as roommates. Also, AC acknowledges going into the tenant's room to check on his cat and she described damage and the smell of urine in his room. Further, the daughter of AC and the tenant also acknowledged going into the tenant's room and packing up some of his possessions.

When the head tenants were asked to explain their rationale for seeing the relationship with the tenant as that of a landlord and tenant, AC responded by stating that she and the tenant have a platonic relationship, they have separate bedrooms, and the tenant is required to pay rent.

### Analysis

At issue is whether the parties have a sub-lease to which the Act applies or some other form of shared living or roommate situation.

A sub-lease may be made for an area as small as a bedroom; however, a sub-lease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. It is necessary to have a shorter period for the sub-lease so that the original lessee can return vacant possession of the property to the landlord when the original tenancy ends.

Where parties have entered into a sub-lease, the original tenant (the lessee) becomes the landlord of the sub-tenant (the sub-lessee) and the Act applies to their agreement. Under a sub-lease, the sub-tenant does not take on any rights or obligations of the original tenancy agreement. The original lessee remains the tenant of the original landlord and is bound to fulfill the terms of their tenancy with the original landlord. The

sub-tenant's rights and obligations are those contained in the sub-lease agreement and the Act.

Under section 34 of the Act, a tenant must not sublet a rental unit without the landlord's written consent. I was not provided documentary evidence that the head tenants obtained the written consent of their landlord to sublet rooms. I consider this to be one factor among many in determining whether a sub-lease formed.

Also of consideration is whether the tenant in this case has the same rights and obligations afforded to all tenants under the Act. Under the Act, a tenant is entitled to exclusive use of the rental unit and the landlord may not enter the rental unit except as provided under section 29 of the Act. Also, a tenant is entitled to have guests in the rental unit and those guests may access the rental unit through common areas of the residential property without interference of the landlord or other occupants. Further, the amount of rent payable is as provided in the tenancy agreement and rent may only change in one of the ways permitted under the Act.

In contrast, with shared living arrangements or roommate situations, the parties do not have a landlord/tenant relationship, rules or considerations are usually achieved by mutual agreement, the costs of living in the residential property are often split or shared and the parties are not bound by the rights and obligations under the Act.

In the case before me, the Rules inhibit the tenant's right to have guests in the residential property and such Rules would not be permitted under the Act. I find the Rules concerning guests more consistent with a shared living arrangement. It would also appear that the landlord and other occupants entered the respondent's room in violation of section 29 of the Act and I did not hear any evidence that the bedrooms are capable of being locked leaving me questioning whether the tenant has exclusive use of the bedroom. Also, from the written submissions before me, it would also appear that the occupants refer to themselves as roommates.

Of further consideration is that the parties did not establish an expiry date for the end of the tenancy when this is necessary for a sub-tenancy agreement. Perhaps, the most compelling factor in making my decision is that rent appears to fluctuate depending upon the number of occupants in the residential property. I find this very inconsistent with most tenancies that fall under the Act. For example: a tenant renting an apartment from a landlord does not pay a different amount of rent to the landlord every month depending upon whether the other apartments in the building are rented or vacant.

In light of all of the above, I find it more likely that this living arrangement is that of a shared living or roommate situation as opposed to a landlord and tenant agreement for a sub-lease. Accordingly, I find the Act does not apply to this living arrangement and the parties are not bound by the obligations under the Act.

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Conclusion

The Act does not apply to this living arrangement and I decline to take jurisdiction to resolve this dispute.

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: April 07, 2016

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Residential Tenancy Branch