



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KEKULI INVESTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, RP, AS, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on May 9, 2016 to: cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”); for the Landlord to make repairs to the rental unit, to allow the Tenant to assign or sublet because the Landlord’s permission has been unreasonably withheld; and to recover their filing fee from the Landlord.

The Tenant, the Landlord, and the co-owner appeared for the hearing. However, only the Tenant and the Landlord provided affirmed testimony. The Tenant served the Application to the Landlord on June 2, 2016 by registered mail. The Landlord confirmed receipt of the Application and the Tenant’s written evidence prior to the hearing. The Landlord confirmed that he had not provided any evidence prior to this hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that an Arbitrator may use their discretion to dismiss unrelated claims with or without leave to re-apply. At the start of the hearing, I determined that the Tenant’s request was to cancel a notice to end tenancy because it is alleged by the Landlord that the Tenant has sublet the rental unit. Accordingly, I determined that the notice to end tenancy was unrelated to the remainder of the Tenant’s Application. Therefore, I severed the issues and decided to only deal with the notice to end tenancy in this hearing. The Tenant’s remaining Application was dismissed with leave to re-apply. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Issue(s) to be Decided

Has the Tenant sublet the rental unit without the Landlord’s consent?

### Background and Evidence

Both parties agreed that tenancy started on May 1, 2014 for a fixed term of one year which continued on a month to month basis. A written tenancy agreement was signed by the parties and provided into evidence. The tenancy agreement shows two Tenants, one of whom is named as the Tenant on the Application, and the other one is referred to as the second co-tenant. The parties agreed that there was a third co-tenant that was added to the tenancy agreement before it commenced even though his name did not appear on the tenancy agreement. This was supported by the fact that the third co-tenant's name appears on the move-in Condition Inspection Report which the Landlord signed.

The parties agreed that pursuant to the tenancy agreement, rent is payable by all the Tenants in the amount of \$2,000.00 on the first day of each month. The Tenants paid the Landlord a security deposit of \$1,000.00 which the Landlord still retains. The parties confirmed that there are no rental arrears in this tenancy.

The Landlord testified that he was receiving rent from the second co-tenant at the onset of the tenancy. Then on or around April 2016, the third co-tenant informed him verbally that he would be leaving the rental unit. The Landlord was not too sure as to when the third co-tenant left but submitted that at this point the tenancy should have ended for all the tenants. After this point the remaining two co-tenants started paying rent under the tenancy agreement to the Landlord. The Landlord testified that the Tenant then informed them that the second co-tenant had left the tenancy and that the Tenant had brought in two other female renters to help in paying the rent.

The Landlord testified that he did not give consent for the Tenant to have these female renters living in the rental unit and he does not even know who they are. As result, the Landlord served the Tenant with the Notice on May 23, 2016. The Notice was provided into evidence and shows the reason for ending the tenancy is because the Tenant has assigned or sublet the rental unit without the Landlord's written consent.

The Tenant confirmed receipt of the Notice but could not specify the exact date he had received it. The Tenant testified that the second co-tenant was paying rent for all the tenants on the tenancy agreement at the onset of the tenancy. The third co-tenant left the rental unit a year after the tenancy started. Then in April 2016, the second co-tenant left the tenancy. The Tenant submitted that he then started to pay the full rent directly to the Landlord on behalf of him and the second co-tenant. However, the second co-tenant then moved out two months later which left the Tenant to pay the full amount of rent. The Tenant testified that he brought in two females into the rental unit to share the rent

with him. The Tenant confirmed that he has no written tenancy agreement with the two female renters and that they were simply there to pay 1/3 contribution to the rent without causing any disturbance. However, when the Tenant informed the Landlord about them, the Landlord wanted to increase the rent to \$2,900.00. The Tenant submitted that this is the real motivation of the Landlord to end the tenancy. The Tenant testified that in between the first and second co-tenants leaving the tenancy, a number of renters came into the tenancy to cover the rent. The Tenant testified that the Landlord was verbally made aware of this and had no issue with this until now. The Landlord denied any knowledge of the Tenant having other renters in the rental unit.

### Analysis

In relation to the form and content of the Notice dated May 23, 2016, I find the Notice complied with the requirements of Section 52 of the Act and that it was served to the Tenant pursuant to Section 88(f) of the Act. The Tenant confirmed receipt of the Notice and applied to dispute the Notice on June 2, 2016. Therefore, I find that the Tenant made the Application to dispute the Notice within the 10 day time limit stipulated by Section 47(4) of the Act.

When a landlord issues a tenant with a Notice, the landlord bears the burden of proving the reasons on the balance of probabilities if they are disputed by the tenant. Therefore, I must determine if the Landlord has met the burden by providing sufficient evidence to prove the reason elected on the Notice. In this case, the Landlord alleges that the Tenant has sublet the rental unit without the Landlord's written consent.

Firstly, I accept the undisputed evidence before me that the original tenancy agreement was entered into and agreed upon with the three tenants. Therefore, I find the tenants were all jointly responsible to pay rent to the Landlord for this tenancy as co-tenants.

There is no evidence before me that when the second and third co-tenant left the tenancy, that they provided proper written notice to the Landlord to end the tenancy. Instead, the remaining Tenant continued to honour the obligation of the original tenancy by continuing to pay rent and has done so since that time. In addition, the signed tenancy agreement makes no mention of the additional cost the tenants were to bear if there were to be additional occupants added to the tenancy agreement. As a result, I find the terms of the original tenancy are still in effect and both parties are responsible for abiding by them.

With respect to the allegation that the Tenant has sublet the rental unit, I find that in order to assign or sublet a rental unit, the tenancy agreement must be for a fixed term; the tenant must obtain the landlord's written permission; and the tenant must vacate the

rental property. In this case, I make a finding that this is not a sublet situation. While the second and third co-tenants for this tenancy have left the rental unit, the Tenant has continued to take responsibility for the original tenancy and has not vacated the rental unit. Furthermore, Policy Guideline 13 to the Act states:

*“Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless the parties all agree to enter into a tenancy agreement to include the new occupant as a tenant.”*

[Reproduced as written]

Based on the foregoing, I find the two females residing with the Tenant are present in the rental unit for the purpose of helping the Tenant to pay rent and are therefore occupants who have no rights or obligations under this tenancy. I find that there is insufficient evidence before me that the Tenant has a tenancy agreement with the female occupants and that they have a reversionary interest in the rental unit. Therefore, I am only able to conclude that the Tenant has not sublet the rental unit and the Notice must therefore be cancelled.

### Conclusion

The Tenant's request to cancel the Notice is granted. The tenancy will continue until it is ended in accordance with the Act. As the Tenant has been successful in cancelling the Notice, the Tenant may recover the \$100.00 filing fee. Pursuant to Section 72(2) (a) of the Act, the Tenant may achieve this relief by deducting \$100.00 from a next installment of rent. The Tenant may want to attach a copy of this decision when making the reduced rent payment to the Landlord. The balance of the Tenant's Application is dismissed with leave to re-apply. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 30, 2016

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Residential Tenancy Branch