



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated August 29, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on August 29, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on September 14, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated August 29, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

On August 1, 1998 the tenant and two other signed an Application for Rent of Suite that provided the tenancy would begin on September 1, 1998. The monthly rent was \$1175. The tenant paid a security deposit of \$300 prior to the start of the tenancy. The present rent is \$1432 per month payable in advance of the first day of each month.

The Application for Rent of Suite provided that "I/we agree not to assign or sublet the premises without first obtaining written consent of the Landlord or his Manager or Agent,

such consent not to be unreasonably or unreasonably withheld.” The conditions of tenancy included the following “1. The premises shall be used exclusively as the private residence of the tenant and the other persons named in this application.”

The landlord testified as follows:

- That he is taking over the management of the rental property for his mother.
- That at the end of August he saw someone sitting on the porch who he did not know. Upon investigation she advised him that she was renting a room from the Tenant.
- She provided the landlord with an Agreement for Rental of Room dated July 27, 2016. That document describes her as an occupant and the applicant as the Leaseholder.. It states she is renting one room in the above suite. It is for one year and provides that she was to pay rent of \$910 per month. She also paid a security deposit.

The tenant testified as follows:

- Since 2000 the co-tenants vacated the rental unit. Initially the tenant accepted other roommates moved in to replace each of the co-tenants. At all times she advised the landlord of the new roommate and the landlord never objected.
- For the last 6 or 7 years the tenant has had one roommate and not two.
- During this period the Tenant has had at least 6 roommates.
- Her new roommate took possession on August 15, 2016.
- The tenant testified that the son’s testimony that the landlord was not advised is false. She testified that in August 2016 she directly advised Mrs. G that a new roommate was moving in. The landlord did not express any reservation or objection. .
- The Applicant testified that she has resided in the rental unit as a tenant since September 1, 1998 to present and has never moved out nor lived elsewhere at any time.
- In 2014 the tenant wrote the landlord advising that she had consulted with a lawyer and the Residential Tenancy Branch and they told her that a roommate is considered an “occupant” and this is not a sublet or assignment.

#### Grounds for Termination

The Notice to End Tenancy sets out the following grounds:

- Tenant has assigned or sublet the rental unit/site without landlord’s written consent

### Analysis

Section 34 of the Residential Tenancy Act provides as follows:

#### **Assignment and subletting**

**34 (1)** Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

After carefully considering all of the evidence and submissions of the parties I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- Section 34(1) provides that a Tenant must not "...sublet a **rental unit**." (my emphasis) unless the landlord consents in writing. In my view this refers to the entire "rental unit." If the legislature intended this limitation to include a room or a portion of the rental unit it would have been easy to state that in the Act.
- The tenant never sublet or assigned the rental unit. The tenant has lived in the rental unit since 1998. At no time has she moved out.
- I do not accept the submission of the agent for the landlord that the terms of the agreement between the tenant and her roommate make this a sublet as contemplated by section 34 of the Act. The agreement between the tenant and her roommate describes the roommate as an occupant.
- I do not accept the submission of the agent for the landlord that the agreement between the tenant and her roommate is for a year (longer than the term of the tenancy agreement) thus amounts to a sublet. It may be that the occupant might have a claim against the applicant if the tenancy ended early. In my view however this does not make this relationship a sublet..
- Further, in my view the landlord is estopped from relying on this provision of the Act. The tenant has lived in the rental unit since 1998. At all times she advised the landlord when there was a change in the roommate. This has occurred at least 6 times during the course of the tenancy. I accept the testimony of the Tenant that she advised the landlord in early August of her new roommate. In each of these situations the landlord never objected. The tenant relied on this conduct. There can be no objection to the number of people living in the rental

unit. The rental unit was limited to 3 co-tenants. Now, the tenant and her roommate live.

Determination and Orders:

As a result I determined that the landlord failed to establish sufficient cause to end the tenancy. I ordered that the Notice to End Tenancy dated August 29, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful in this application I ordered that the Landlord pay to the Tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

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: November 09, 2016

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Residential Tenancy Branch