



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AS, MNDC, FF

### Introduction

The tenants apply for an order requiring the landlord's consent to a subletting of the premises and for a monetary award for damages resulting from his refusal to consent to a particular subletting.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Has the landlord unlawfully withheld consent to a subletting of the rental unit? If so, are the tenants entitled to an order permitting the subletting or to damages for the withholding?

### Background and Evidence

The rental unit is a two bedroom condominium apartment.

There is no written tenancy agreement. The parties agree that the tenancy started in November 2014. The monthly rent is \$1200.00. The landlord received \$500.00 of deposit money though it is uncertain whether it was received as a security deposit or a pet damage deposit.

The tenant Mr. B. has had to return to Ontario for personal, medical reasons. He expects to be away at least six months. The tenant Ms. G. will be leaving the country for work related matters. She is uncertain about when she will return.

In late November Mr. B. informed the landlord by text of his situation and proposed a subletting. The only “written” response from the landlord was that he would have to check with his wife and with his lawyer.

Mr. B. found prospective sub-tenants that he thought would be suitable but the landlord refused consent stating he was worried about damage to the premises.

The tenants have continued to pay rent up to and including January 2017 rent.

### Analysis

Section 34 of the *Residential Tenancy Act* states the law regarding subletting. It provides:

#### **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.

The tenants do not have the landlord's consent in writing to sublet the rental unit.

This is a month to month tenancy, not a fixed term tenancy. The landlord may refuse an assignment or subletting without reasons.

Conclusion

The tenants do not have the right to unilaterally sublet the rental unit and the landlord's consent to do so cannot be compelled.

The tenants' application must be dismissed.

This decision was rendered orally at hearing and 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: January 24, 2017

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Residential Tenancy Branch