



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNC MNDC OLC LRE FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to make submissions.

The tenant's application was filed within the time period required under the Act.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Preliminary Issue – *Res Judicata*

*Res judicata* is the legal doctrine preventing, among others, the rehearing of an issue on which a previous binding decision has been made involving the same parties.

Counsel for the tenant submits that the issue with respect to the grounds for issuing the 1 Month Notice to End Tenancy dated February 24, 2017 is *Res judicata* as it has previously been decided upon. Counsel submits that in a decision dated January 16, 2017, the landlord's 1 Month Notice to End Tenancy dated November 25, 2016 was set aside the Arbitrator found the tenant had permission to sublet the rental unit. Counsel submits that the Arbitrator made a finding that there was "an implied waiver of the written permission requirement for subletting". Counsel further submits that in a decision dated February 6, 2017, an Arbitrator dismissed the landlord's application for review consideration and confirmed the original decision dated January 16, 2017. Counsel submits that following the unsuccessful review consideration application, on February 10, 2017 the landlord issued a caution notice to the tenant based on the same issue of subletting the rental unit without the landlord's written consent. The landlord then issued the new 1 Month Notice which is subject to this dispute. Counsel submits that there has been no change in the tenancy and the rental unit is still sublet to the same person as per the previous hearing.

Counsel for the landlord submits that the matter is not *Res judicata* as the previous Arbitrator made a finding that there was implied waiver which is not the same as written waiver. Counsel submits that implied waiver doesn't last forever and can be revoked with reasonable written notice. Counsel submits that the previous Arbitrator did not determine that the implied waiver was not revocable. Counsel for the landlord therefore submits that this is a new legal situation as it cannot be said the landlord continues to waive written consent to sublet.

I do not accept the argument of the landlord's counsel that since the landlord has now put the tenant on notice requiring written consent to sublet the rental unit that this creates a new legal situation which has not previously been decided. The rental unit is still being sublet to the same sub-tenant subject to the previous hearing and the Arbitrator made a finding that there was an implied waiver of the written permission requirement for subletting to this sub-tenant. The landlord cannot simply now put the tenant on notice requiring written permission to sublet to the same sub-tenant for whom they have already been found to have waived this requirement and attempt to end the tenancy on this same ground.

I find that the subject matter of this application, specifically the grounds for issuing the 1 Month Notice to End Tenancy is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

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 05, 2017

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Residential Tenancy Branch