



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacific Cove Apartments  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNR, MNDC, OLC, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The hearing did not conclude on the first scheduled date and was adjourned to continue. The tenant and an agent for the landlord company attended the hearing on both scheduled dates, and my Interim Decision was provided to the parties after the first scheduled date.

During the course of the first day of the hearing, the parties agreed that the tenant has paid the rent and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is cancelled.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages caused by the landlord's failure to comply with a previous order of the director and the *Residential Tenancy Act* respecting room-mates, and for loss of quiet enjoyment of the rental unit?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement with respect to room-mates?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on May 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$1,132.00 per month is currently payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the

outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$475.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the 5<sup>th</sup> floor of an apartment complex and a copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that the parties had been participants in a hearing in October, 2011 and a copy of the resulting Decision has been provided for this hearing. It is dated October 5, 2011 and states that the parties agreed to settle the dispute in the following terms:

1. "the tenant and landlord agree that the tenant will provide the landlord with the name and particulars of her room-mate and the room-mate will be reflected on the tenancy agreement as an additional occupant of the rental unit and the landlord and tenant will amend the tenancy agreement by their signatures.
2. the tenant and landlord agree that as a result of the mutually amended tenancy agreement, the rent payable per month will increase \$175, as of the rent payable for November 2011 (November 1, 2011).
3. The tenant and landlord agree the landlord will provide the tenant with an additional set of keys for the rental unit.
4. the tenant and landlord agree that as a result of the foregoing the tenancy will continue."

The tenant seeks an order that the landlord comply with the Decision by allowing the tenant to have room-mates and provide keys. The landlord wrote the tenant a letter about unauthorized room-mate demanding that the tenant return keys the tenant had obtained from a weekend manager, and charged the tenant \$25.00 for it. Since the landlord threatened eviction in the letter, the tenant returned the key in March, 2017 when that room-mate moved out. Consequently, the tenant couldn't get another room-mate for April because the tenant didn't have a key to give to the room-mate. A few prospective room-mates were interested.

The tenant further testified that she has had about 10 room-mates since the October, 2011 hearing without any problems, and now the landlord's agent wants to interview and approve room-mates. The landlord's agent at that time didn't want to keep writing up new tenancy agreements, and the tenant would keep keys, give the landlord's agent particulars, and that happened for 4 ½ years. When this agent of the landlord took over, the tenant told him about the Decision who replied that the Residential Tenancy Branch advised that a new tenancy agreement didn't have to be created because the person was not a tenant, but a room-mate. This agent of the landlord took over in January, 2016 and the tenant gave him information required every time by putting it in the landlord's mailbox. He was

never there and did not reply or acknowledge receipt. The tenant paid the extra rent each month until 2012.

The tenant wrote to the landlord on February 26, 2017 offering to have the landlord meet a room-mate. The landlord responded in writing the next day denying the request and stating that he was leaving for vacation, and was gone for 3 weeks.

The tenant charged room-mates \$820.00 per month for rent in addition to \$50.00 for utilities. On March 30, 2017 the tenant wrote another letter to the landlord explaining that the tenant couldn't pay full rent because the landlord didn't give the tenant a key or permission, but the landlord didn't respond until the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 10, 2017.

On February 20, 2017 the tenant had a room-mate move in and had given the information required to the landlord by placing it in the mailbox as well as a copy to the resident manager so he would know. The tenant never heard from either of them. The previous property manager or agent of the landlord would always respond, but not this agent; they are brothers. There was no objection about room-mates until a year later.

The tenant claims \$1,640.00 as a loss of rental income the tenant could have had, \$100.00 for loss of payment for cable TV, high speed internet and hydro; \$2,264.00 for loss of quiet enjoyment for the months of January to April, 2017, being 50% of the rent paid for those months; for a total claim of \$4,004.00. The tenant also seeks an order that the landlord provide a building key for the tenant to give to a room-mate, and for an order that the landlord comply with the October 5, 2011 Decision by allowing the tenant to have room-mates.

**The landlord's agent** testified that the Decision of October 5, 2011 says that the parties should mutually agree and there was a procedure to be followed. The tenancy agreement was amended as per the Decision on November 1, 2011. The tenancy agreement also states: "13. ADDITIONAL OCCUPANTS. Only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above who, without the landlord's prior written consent, resides in the rental unit or on the residential property in excess of fourteen cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this Agreement. If the tenant anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy on proper notice."

The landlord's agent testified that the tenant has brought in room-mates without the landlord's approval, without any permission, and the landlord's agent has never met them. One of the room-mates was only there for a short time and never returned the key. The landlord's agent told the tenant that if the previous room-mate returned the entrance key another room-mate would be considered. After warning the tenant, the tenant collected \$820.00 from a room-mate who moved in on February 20, 2017 and moved out 3 days later. A copy of a letter from the room-mate and a copy of the rent receipt have both been provided for this hearing. The tenant collected \$820.00 from him as well as \$50.00 for utilities and didn't return a security deposit. The landlord has also spoken with both of the previous room-mates who confirmed that. The tenant asks for 70% of her rent from the room-mates and they have lived in the rental unit without prior permission of the landlord.

The landlord also submits that the agreement set out in the October 5, 2011 Decision refers to one particular room-mate, not future occupants, which is consistent with the tenancy agreement.

### Analysis

The *Residential Tenancy Act* states:

#### **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.

I also refer to Residential Tenancy Policy Guideline #19 – Assignment and Sublet which defines assignment and subletting:

“Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

“When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant.

“Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit,

and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

“Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.”

In this case, the tenant wants room-mates to assist with the payment of rent, and seeks monetary compensation for the landlord’s failure to agree to additional occupants. In order to be successful, the tenant must establish that the landlord has failed to comply with the *Act* or the tenancy agreement.

The tenant’s position is that there were a number of room-mates residing in the rental unit with the tenant since the October 5, 2011 Decision without any requirement from the landlord to change the tenancy agreement or get prior written permission. I have read the October 5, 2011 Decision, and I agree with the landlord that the agreement between the parties was made in respect of specific room-mates, and the tenancy agreement was amended to reflect that.

The tenancy agreement is very clear with respect to additional occupants, and specifies that it is a material term of the tenancy agreement, which means that if the tenant hadn’t agreed to the term, the landlord would not have entered into the tenancy agreement.

The landlord has refused to give consent to room-mates until a former room-mate returns a building key, and submits that the former room-mate won’t do that until the tenant returns a security deposit to that former room-mate. The landlord has provided a copy of a letter from the former room-mate to verify that testimony, but the tenant has been advised by police to not contact the former room-mate.

Regardless of the reasons for not consenting, the *Act* states that a landlord may not unreasonably withhold such consent where a fixed term tenancy exists in excess of 6 months. This tenancy is on a month-to-month basis.

In the circumstances, I am not satisfied that the landlord has failed to comply with the *Act* or the tenancy agreement, nor has the landlord failed to comply with the October 5, 2011 Decision.

The tenant has provided some evidentiary material but did not lead any testimony with respect to loss of quiet enjoyment, and I dismiss that portion of the tenant's application with leave to reapply. I have not made any findings of fact or law with respect to the merits of that application.

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 10, 2017 is hereby cancelled by consent.

The tenant's application for monetary compensation for the landlord's failure to consent to room-mates is hereby dismissed.

The tenant's application for monetary compensation for loss of quiet enjoyment of the rental unit is hereby dismissed with leave to reapply.

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: May 31, 2017

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Residential Tenancy Branch