



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, RR, MNDC, FF

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed March 28, 2017 in which the Applicants requested an Order that the Landlord make repairs to the rental unit, monetary compensation and a rent reduction for repairs and to recover the filing fee.

The hearing was conducted by teleconference on May 1, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter—Jurisdiction

The Residential Tenancy Agreement in evidence was between the Landlords and S.H. H.D. confirmed that S.H. is the Applicant's estranged husband.

H.D. testified that they were unaware that S.H. had moved from the rental unit. He stated that recently, they needed access to the rental unit to have the property appraised for refinancing purposes and despite giving proper notice, when the appraiser arrived, they were not permitted entry.

H.D. testified that L.D. then spoke with S.H. who confirmed that he moved out “a while ago”. He also stated that S.H. stated that he is a very private person and he has not told his friends that he and D.N. had separated.

H.D. further stated that S.H. has continued to pay the rent, and as such they were unaware he had vacated the rental unit.

L.D. also testified. She confirmed that she texted S.H. on February 6, 2017 to advise him that they needed access to the townhouse as they were having the property appraised for refinancing. She stated that she gave him a few different times and they decided on February 9, 2017 between 10:00 a.m. and noon. Despite this agreement, on February 9, 2017 when the appraiser showed up there was no one there. She further stated that S.H. did not respond to emails/texts/calls. She reported that when she finally spoke with him he was being very “sketchy” and he then admitted that he had moved out.

The Applicant, D.N., also testified and confirmed that S.H. moved from the rental unit in April of 2016.

Section 44(1)(d) of the *Residential Tenancy Act* provides that a tenancy ends when a tenant vacates the rental unit. Accordingly, the tenancy between S.H. and the Landlords ended April 2016.

Upon discovering the Tenant had vacated the rental unit, the Landlord issued a 1 Month Notice to End Tenancy for Cause on March 31, 2017 with an effective date of April 30, 2017. The reasons stated on the Notice are that the “Tenant has assigned or sublet the rental unit/site without the landlord’s written consent”. The Tenant, S.H., did not apply to dispute the Notice to End Tenancy.

The Notice was issued pursuant to section 47 of the *Act*; the portions of this section relevant to the matter before me read as follows:

**Landlord's notice: cause**

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

...

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

As such, even if the tenancy had not ended in April of 2016 when the Tenant vacated the rental unit, he is conclusively presumed to have accepted the end of the tenancy by not filing for dispute resolution within 10 days of receipt of the 1 Month Notice to End Tenancy.

H.D. confirmed that they asked D.N. to sign a tenancy agreement and she refused. L.D. further confirmed they are agreeable to entering into a tenancy agreement with D.N. but that it would need to be negotiated immediately.

The monetary compensation sought by D.N., namely \$250.00 per month for four months, relates to a time period in which the Tenant was no longer in occupation.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge.

Based on the evidence before me, I am not satisfied that I have jurisdiction under the *Residential Tenancy Act* to hear the dispute between D.N. and the Landlords. While a tenancy existed between the Applicant's estranged husband, S.H., and the Landlords, that tenancy has ended. Further, the Applicant, D.N. is an occupant, not a Tenant.

An occupant is defined in the *Residential Tenancy Policy Guideline 13* as follows: 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 original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a written tenancy agreement to include the new occupant as a tenant.

For this reason, I decline to hear the application.

The parties confirmed they would discuss a tenancy agreement between the Applicant, D.N., and the Landlords, as well as considering the Applicant's request for compensation related to the washing machine.

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 01, 2017

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Residential Tenancy Branch