



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC DRI RP PSI FF

### **Introduction:**

Both parties made applications and attended the hearing and gave sworn testimony. I find that the Notice to End a Residential Tenancy dated August 31, 2017 to be effective September 30, 2017 was served by posting it on the door on August 31, 2017. The effective date on the Notice is automatically corrected to October 31, 2017 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The tenant said he served the Application for Dispute Resolution by registered mail. However, the landlord provided evidence that he only received on page of the application, that is the last page noting the hearing date. I find the documents were legally served pursuant to sections 88 and 89 for the purposes of this hearing but the tenant's was incomplete. The tenant applies to

- (i) cancel a Notice to End the Tenancy for cause pursuant to section 47 of the *Residential Tenancy Act* (the Act)
- (ii) dispute a rent increase
- (iii) For an order to make repairs
- (iv) For an order to provide service and facilities prescribed by law;
- (v) To restrict the landlord's entry to the suite pursuant to section 29 of the Act; and
- (vi) To recover the filing fee.

The landlord applies for an Order of Possession and to recover the filing fee.

### **Issues:**

Has the landlord proved on the balance of probabilities that there is good cause to end the tenancy or is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The parties agreed the original tenancy began on September 1,

2014 at a rent of \$920 which was legally increased to \$940. The tenant paid a security deposit of \$460. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant has assigned or sublet the unit without the landlord's written consent.

The landlord said the tenant called him in late 2016 and asked him if he could rent the unit to a friend. The landlord said he said, "No", but the tenant moved out and gave a key to the friend. The landlord said he then made an agreement with the friend to rent to her for 6 months at \$1020 a month. In evidence is a copy of the lease showing a rent of \$1000 plus \$20 for parking. The security deposit item is stroked out. She left July 31, 2017 and gave the key back to the tenant. She paid the rent while she stayed in the unit. The landlord said the present tenant had agreed to a rent increase to \$1020 a month; the tenant denies this. In evidence is a copy of the present tenant lease showing he rented in 2014 at a rental rate of \$920 plus \$20 parking.

The tenant said he does not recall asking for permission to sublet. His friend had some marital difficulties so he agreed she could stay at his unit and he would live with her husband until their problems were sorted out. It was a temporary separation. He never moved out and the manager illegally made a new lease with his friend and now wants the tenant to pay \$1020 a month. He said he never consented to end his tenancy and never signed a new lease. He said his friend said the manager gave her a new lease in his name from July 1, 2017 to July 1, 2018 but she can't find it.

In evidence is the one month Notice to End Tenancy and copies of the two leases. On the basis of the documentary and solemnly sworn evidence a decision has been made.

### **Analysis:**

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside. I find the tenant disputed the Notice in time.

I find insufficient evidence that this was a sublet situation. The tenant never terminated his original lease and his security deposit remained with the landlord. This is supported by the copy of the new agreement made with his friend without authority which shows no security deposit paid by the friend. I find insufficient evidence that the tenant agreed to a rent increase. I find his tenancy is continued with the original lease still in effect with rent at \$940 plus \$20 for parking until legally increased.

The Residential Tenancy Branch Rules of Procedure #2.3 provide an arbitrator may dismiss unrelated disputes in a single application with leave to reapply. The tenant has included a number of disputes unrelated to the main issue of the Notice to End Tenancy for unauthorized

sublet. I find the weight of the evidence is that he did not serve the landlord with all pages of his application so the landlord was not notified of these additional disputes. I dismiss this portion of his application with leave to reapply.

However, I note section 29 of the Act legislates when a landlord may enter a tenant's unit. Section 32 of the Act provides a landlord must maintain a unit in a state of decoration and repair that complies with health, safety and housing standards required by law. Although, I find the landlord was not notified of these disputes and there is insufficient documentary evidence to prove that the landlord is illegally entering the tenant's unit or not doing required repairs, I find a landlord is required to comply with the legislation.

Although the tenant in the hearing said he wanted money refunded, he provided no documentary evidence of monies paid to the landlord and in his application, he claimed no monetary amount. According to the Principles of Natural Justice, a party is entitled to have notice of any claim against them and have the opportunity to respond. I dismiss this portion of his claim with leave to reapply with sufficient evidence to support his claim.

**Conclusion:**

I set aside and cancel the Notice to End Tenancy dated August 31, 2017. The tenancy is continued at a rent of \$940 plus \$20 parking a month. I dismiss the tenant's other disputes and his claim for a refund of rent and give him leave to reapply. I find the tenant entitled to recover the filing fee.

I dismiss the landlord's application without recovery of the filing fee due to his lack of success.

**I HEREBY ORDER that the tenant may deduct \$100 from his rent to recover his filing fee.**

**I HEREBY ORDER THE LANDLORD:**

- 1. To comply with section 29 of the Act to enter the tenant's unit legally.**
- 2. To comply with section 32 of the Act and do any necessary repairs.**

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 07, 2017

---

Residential Tenancy Branch