



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC, FF

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 31, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 3 pages of evidence submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were sent to the Landlords, via registered mail. The female Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 26, 2011 the Landlords submitted 11 pages of evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenant, via registered mail, on November 06, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlords and the Tenant agree that:

- this tenancy began on November 01, 2014;
- rent is due by the first day of each month;
- when the tenancy began the Landlords listed the Tenant's three children on the tenancy agreement, indicating that any two of them could live in the rental unit;

- section 2 of the tenancy agreement declares that the people listed on the tenancy agreement will be the only permanent occupants unless the landlord agrees in writing to permit other permanent occupants;
- the tenancy agreement declares that section 2 of the tenancy agreement is a material covenant of this tenancy agreement and that its breach will provide grounds for termination;
- section 9 of the tenancy agreement reiterates that failing to obtain written consent for additional occupants is a fundamental breach of the tenancy agreement for which the Landlords can end the tenancy;
- section 17 of the tenancy agreement stipulates that the Tenant cannot assign or sublet the rental unit without written permission from the Landlords;
- on August 03, 2017 the Tenant sent the Landlords an email in which he asked the Landlords to stop harassing him in regards to his roommates and he offered to provide the name of his roommates; and
- on August 04, 2017 the Landlords sent the Tenant a letter in which the Landlord directed to comply with section 17 of the tenancy agreement.

The female Landlord stated that:

- the Landlords wish to end this tenancy because the Tenant's children are no longer living in the rental unit and other people have lived in the rental unit without the knowledge and consent of the Landlord;
- the Landlords do not know who has been, or who is, living in the rental unit, as the Tenant has never provided that information to the Landlords; and
- the Landlords think the tenancy has been assigned or sublet because the unknown occupant is paying rent to the Tenant.

The Tenant stated that:

- after his children moved out of the rental unit he has allowed two people to live in the rental unit as roommates;
- one person is currently living in the unit with him;
- the roommates occupied bedrooms his children used to occupy;
- the roommates paid rent to him to assist him with paying the rent;
- he has not assigned or sublet the rental unit to his roommates;
- he is more than willing to provide the Landlords with the names of any occupants who are living with him;
- he was aware of the terms in the tenancy agreement that required him to obtain written permission for additional occupants, but the male Landlord told him that was simply a formality; and
- it is unfair to suggest that he cannot have roommates, providing he does not have more than three people living in the rental unit.

The female Landlord stated that a One Month Notice to End Tenancy for Cause was posted on two doors of the rental unit on August 25, 2017. The Tenant stated that he is not certain when he located the One Month Notice to End Tenancy for Cause, although he believes it was on, or about, August 25, 2017.

The One Month Notice to End Tenancy for Cause, which declares that the Tenant must vacate the rental unit by September 30, 2017, was submitted in evidence. This Notice declares that the Landlords are

ending the tenancy because the tenant has breached a material term of the tenancy that was not corrected within a reasonable time and the tenant has assigned or sublet the rental unit without written consent.

### Analysis

On the basis of the undisputed evidence I find that the Tenant currently has one roommate living in the rental unit and he has had one previous roommate, neither of which was approved by the Landlords.

On the basis of the undisputed evidence I find that the Tenant was served with a One Month Notice to End Tenancy for Cause which declared that he must vacate the rental unit by September 30, 2017. The Notice to End Tenancy declared that the Landlord wishes to end the tenancy in accordance with sections 47(1)(h) and 47(1)(i) of the *Residential Tenancy Act (Act)*.

Section 47(1)(i) of the Act authorizes a landlord to end a tenancy by giving notice if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining written consent from the landlord.

Residential Tenancy Branch Policy Guideline #19, with which I concur, defines assignment as 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. It further stipulates that when a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment.

As there is no evidence that the Tenant has assigned the rights of this tenancy agreement to either of his roommates, I cannot conclude that the Tenant has assigned this tenancy.

Residential Tenancy Branch Policy Guideline #19 suggests that a sublease occurs when the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is entered into by the original tenant and the sub-tenant. The policy guideline suggests that the original tenant remains the tenant of the original landlord, and, assuming the original tenant moves out of the rental unit, the original tenant grants exclusive occupancy to the sub-tenant and the original tenant becomes the "landlord" of the sub-tenant.

The *Act* defines a landlord as follows:

- "landlord", in relation to a rental unit, includes any of the following:
- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
    - (i) permits occupation of the rental unit under a tenancy agreement, or
    - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
  - (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
  - (c) a person, other than a tenant occupying the rental unit, who
    - (i) is entitled to possession of the rental unit, and
    - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
  - (d) a former landlord, when the context requires this;

As there is no evidence to show that the Tenant is the owner of the rental unit, the owner's agent, or another person who is acting on behalf of the owner, I find that the Tenant is not a landlord as defined by section 1(a) of the *Act*.

As there is no evidence to show that the Tenant is an heir, assign, personal representative or successor in title to a person referred to in section 1(a) of the *Act*, I find that he is not a landlord as defined by section 1(b) of the *Act*.

As the evidence shows that the Tenant is a tenant who is occupying the rental unit, I find that he is not a landlord as defined by section 1(c) of the *Act*.

As there is no evidence to show that the Tenant is a former landlord of this rental property, I find that he is not a landlord as defined by section 1(d) of the *Act*.

In these circumstances the Tenant's roommate(s) must be considered an occupant(s) as defined in the *Residential Tenancy Policy Guideline Manual*, which stipulates that when 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 tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

As the Tenant is not his roommate's landlord, I find that he has not sublet the rental unit to his roommate.

As the Landlords have failed to establish that the tenancy has been assigned or sublet, I find that the Landlords do not have the right to end this tenancy pursuant to section 47(1)(i) of the *Act*.

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy by giving notice if the tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Before determining whether the Landlords have the right to end this tenancy because the Tenant breached sections 2 and 9 of the tenancy agreement, I must first determine whether those sections are enforceable.

Section 6(3) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if it is inconsistent with the *Act* or the *Residential Tenancy Regulations*; if the term is unconscionable; or the term is not expressed in a manner that clearly communicates the rights and obligations under it.

A term in a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

I find that any term that gives a landlord the right to determine whether a tenant can permit a third party to occupy a rental unit is unconscionable. I find that sections 2 and 9 of the tenancy agreement are grossly unfair to the Tenant because they grant the Landlords an inordinate amount of control over the Tenant's personal life. As I find these terms to be unconscionable, I find that they are not enforceable.

As the Landlords are attempting to end this tenancy on the basis an unenforceable term, I find they have not established they have the right to end this tenancy pursuant to section 47(1)(h) of the *Act*.

In adjudicating this matter I note that I would not find a term in a tenancy agreement that requires a tenant to inform a landlord of the identity of all occupants to be unconscionable, as I find it reasonable for a landlord to want to know who is occupying the rental unit. I find the term becomes unconscionable only when the term grants the landlord the right to control who the tenant can choose as a roommate.

As the Landlords have failed to establish grounds to end the tenancy for any of the reasons cited on the Notice to End Tenancy, I grant the Tenant's application to set aside the One Month Notice to End Tenancy.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the cost of filing an Application.

#### Conclusion

The Notice to End Tenancy, dated August 25, 2017, is set aside.

The Tenant has established a monetary claim of \$100.00 in compensation for the cost of filing an Application for Dispute Resolution. I therefore authorize the Tenant to reduce one monthly rent payment by \$100.00 in full satisfaction of this monetary claim.

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 23, 2017

---

Residential Tenancy Branch