



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC; FF

### **Introduction**

This is the Tenants' Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause and to recover the cost of the filing fee from the Landlord.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

The parties provided a total of 79 pages of documentary evidence and 75 minutes of oral testimony, some of which was not relevant to the Tenants' Application to cancel the Notice to End Tenancy. The documents' pages were not numbered in sequence, as is required by the Rules of Procedure, and the parties made reference to them in an extremely confusing manner. For example, on May 2, 2018, the Landlord provided a package of evidence, which contained pages numbered 39 to 42; on May 10, 2018, he provided a package of evidence, which contained 27 pages, and the pages were numbered 1, 2, 3, 4, 1, 2, 3, 4, 5, 6, 7, 1 through to 15 and one unnumbered page. Finally, on May 11, 2018, the Landlord provided his last package which contained 2 pages, numbered 43 and 44. The Tenant also provided three separate packages of documents, which appear to be duplicates of some of the Landlord's documents and which include some documents which have no relevance to the Tenant's Application (a copy of a Move-In Condition Inspection Report, for example). Because of the confusing, disorganized and irrelevant documents provided, with the exception of the Notice to End Tenancy, I have only recorded the relevant oral testimony in this Decision and have not referred to specific e-mails or written submissions of the parties.



The Tenant provided a copy of the Notice in evidence. The parties agreed that they both understand that the One Month Notice to End Tenancy issued March 31, 2018, for an effective end-of-tenancy date of May 31, 2018, is the Notice that the Tenant seeks to cancel.

Neither party provided a copy of a tenancy agreement.

The Landlord has not made his own Application and is at liberty to do so if he wishes.

### **Issue(s) to be Decided**

Is the One Month Notice to End Tenancy issued March 31, 2018 (the “Notice”) a valid notice to end the tenancy?

### **Background and Evidence**

During the Hearing, the parties attempted to come to an agreement with respect to an end of tenancy date, but were unsuccessful.

#### **The Landlord gave the following relevant testimony:**

The rental unit has two bedrooms, two bathrooms, plus a den and covered patio. Monthly rent is \$1,600.00, due on the first day of each month.

The Landlord stated that the parties agreed on June 20, 2017, that the tenancy would be for a fixed term and that the Tenants would move out on January 30, 2018. The Landlord stated that on October 15, 2017, the Tenants asked to extend the end of tenancy date to the “end of summer”, but the Landlord said “no”. The Landlord stated that he wanted to sell the rental property and “get out of here”. The Landlord testified that he agreed to extend the end of tenancy date to March 30, 2018

The Landlord submitted that the Tenants “never objected and therefore he accepted that the tenancy would end on March 30, 2018. The Landlord referred to an email transaction between the parties on January 30, 2018, and submitted that it was proof of a mutual agreement to end the tenancy on March 30, 2018.

The Landlord testified that the Tenants did not move out on March 30, 2018, and therefore he is in breach of their mutual agreement. The Landlord submitted that the Tenants are in “illegal occupation” of the rental unit.



The Landlord testified that the Tenants told him that they had lost one of their fobs, so the Landlord gave them a replacement fob. He stated that the security camera in the rental property shows the Tenant helping another person move a couch into the elevator. The Landlord stated that the Tenant did not ask permission of the strata corporation or make an appointment to move the couch as required by the strata. The Landlord stated that the Tenant "forced the couch inside" causing damage which was charged against the Landlord. The Landlord stated that this was also evidence that the Tenant had sublet the rental unit to another party without the Landlord's permission.

The Landlord asked for permission to decommission the third fob.

The male Tenant gave the following testimony:

The Tenant acknowledged receipt of the Notice to End Tenancy on April 6, 2018, by registered mail.

The Tenant acknowledged that the parties had an agreement to end the tenancy in January, 2018, but that he asked for an extension to the end of the summer, 2018. The Tenant stated that the Landlord turned it down and agreed to extend it to March 30, 2018, but did not "draft an extension notice".

The Tenant testified that the Tenants found a new place and called the Landlord on February 32, 2018, to advise him that they would move out "on February 28<sup>th</sup> or mid-March". The Tenant testified that the Landlord told him, "no, you have to move out on March 30, 2018". The Tenant stated that they could not find another place for the end of March, 2018, and that he understood that the Landlord "wanted to sell the place".

The Tenant denied subletting the rental unit to another party. He stated that he has found the lost fob and that he now has three working fobs and only needs two.

### **Analysis**

The Tenant acknowledged that he has now has three working fobs. I advised the Landlord that he could decommission the third fob that he gave the Tenant because it is no longer needed.



When a tenant seeks to cancel a notice to end the tenancy, the burden is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notice to End Tenancy.

In this case, the Landlord has issued a Notice under Section 47 of the Act (the “Notice”), which is the notice that the Tenant seeks to cancel.

The Landlord provided the following reasons for ending the tenancy on the Notice:

“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.  
Tenant has assigned or sublet the rental unit without the landlord’s written consent.”

The Landlord also alleged that the parties had a mutual agreement to end the tenancy; however, no such signed agreement was provided in evidence. The Landlord submitted that the parties came to the agreement by way of e-mail correspondence; however, Section 52 of the Act provides:

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy **must** be in writing and **must**

- (a) be signed and dated by the landlord or tenant giving the notice,**
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

[Reproduced as written, my emphasis added.]

Text messages do not comply with Section 52 of the Act because they are not signed by the parties.



In any event, the Notice relevant to the Tenants' Application refers to "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so". In this case, the Landlord did not provide a copy of the tenancy agreement and therefore I find that the Landlord has not provided sufficient evidence to support that reason for ending the tenancy. In addition, the legislation changed in December, 2017, such that a clause in a fixed term tenancies where the tenant is required to move out of the rental unit at the end of the term are no longer enforceable, except in limited circumstances which do not apply here.

Policy Guideline 19 provides the following information, in part:

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 the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. **This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit.** The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

[Reproduced as written, my emphasis added.]

In both cases, the landlord must give permission, which may not unreasonably be withheld.

In this case, the Tenants remain in the rental unit and continue to pay rent to the Landlord. Therefore, the Tenants have not permanently transferred their rights under the tenancy agreement to a third party and the tenancy agreement has not been assigned.



In order for a tenant to sublet a rental unit, the tenancy agreement must be a term lease and must be in writing. The Landlord did not provide a copy of the tenancy agreement and it is not clear from the parties' testimony that a written tenancy agreement actually exists. Therefore, it is not possible for me to determine if the written tenancy agreement is a term lease or a month-to-month tenancy. I also find that the Landlord provided insufficient evidence that the man who helped to move the couch into the rental unit is actually living in the rental unit.

For the reasons provided above, I find that the Notice is not a valid notice to end the tenancy. The tenancy will continue until it is ended in accordance with the provisions of Section 44 of the Act.

The Tenants have been successful in their Application and I find that they are entitled to recover the cost of the \$100.00 filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct \$100.00 from future rent due to the Landlord.

### **Conclusion**

The Tenants' Application is granted. The tenancy will continue.

The Tenants may deduct the cost of the filing fee in the amount of **\$100.00** from future rent due to the Landlord.

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 29, 2018

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Residential Tenancy Branch