



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC, LRE, FF

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for an order to suspend or set conditions on the landlord's right to enter the rental unit and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed the service of documents. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The landlord said that he had not submitted any evidence of his own. I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Is the tenant entitled to an order setting conditions on the landlord's right to enter the rental unit? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The parties agreed that the tenancy started in August 2017. There is no written tenancy agreement. The monthly rent is \$1,900.00 payable on the first of each month and does not include utilities. The rental unit is a two level half duplex. Each level has a fully contained rental suite. The landlord testified that the tenant lives in the lower level and rents the upstairs rooms to students.

On September 21, 2018 the landlord served the tenant in person with a one month notice to end tenancy for cause. The tenant made application to dispute the notice in a timely manner.

The reasons for the notice were:

The tenant has allowed an unreasonable number of occupants

The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The tenant has sublet without the landlord's permission

The landlord testified that the tenant rents rooms to students without his permission but was unable to provide testimony on how many students lived in the rental unit. The landlord also testified that the tenant kept the unit in a messy condition and garbage had accumulated on the deck and in the yard of the rental unit.

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove at least one of the reasons for the notice to end tenancy.

The landlord did not file any documentary evidence to support his testimony. In the absence of a written tenancy agreement, I am unable to determine the names and number of occupants that the landlord agreed to rent the unit to. The tenant stated that they had a verbal agreement that the tenant could keep students in the second suite to help her pay rent. The landlord denied having made such an agreement.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen. In the absence of a written agreement, I am not prepared to interpret the terms that the landlord had allegedly agreed to.

Since the rental unit has two fully contained suites it is more likely than not that the tenant rented the half duplex with intentions of renting out one suite for financial reasons as it would be impossible for her to occupy both suites in the rental unit.

Since there is no written record of who would be occupying the rental unit and the landlord could not provide accurate information on the number of people occupying the rental unit, I find that the landlord has not proven that the tenant has allowed an unreasonable number of occupants in the rental unit.

The landlord also did not provide any evidence to support his testimony regarding the messy condition of the rental unit and therefore I am unable to determine whether the tenant has seriously jeopardized the health and safety of another occupant or the landlord. The tenant is reminded that she has to maintain the rental unit in a neat, tidy and clean manner that does not pose any threat to the health and safety of the other occupants or the landlord.

The landlord has also alleged that the tenant has sublet or assigned the rental unit without the landlord's consent. *Residential Tenancy Policy Guideline#19* addresses assignments and sublets.

The use of the word 'sublet' can cause confusion because under the *Act* it refers to the situation where the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant.

'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the *Act*, this is not considered to be a sublet. In determining if a scenario such as this is a sublet as contemplated by the *Residential Tenancy Act*, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship.

If there is a landlord/tenant relationship, the provisions of the *Residential Tenancy Act* apply to the parties. If there is no landlord/tenant relationship, the *Act* does not apply. 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.

The landlord issued a one month notice to end tenancy because he believes that the tenant has sublet or assigned the rental unit to a third party. In this case the landlord agreed that the tenant continues to occupy the rental unit.

Based on the testimony of both parties, I find that since the tenant continues to occupy the rental unit the tenant has not sublet the rental unit as contemplated by the *Act*.

Based on the above, I find that the landlord has not proven that he has reason to end the tenancy. Accordingly, the notice to end tenancy is set aside and the tenancy will continue

Regarding the landlord's right to enter the rental unit the landlord is reminded that he must be in compliance with Section 29 of the *Residential Tenancy Act*

Section 29 states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice.

Since the tenant has proven her case, I award the tenant the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 from a future rent.

### **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

The tenant may make a one-time deduction of \$100.00 from a future rent.

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 09, 2018

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Residential Tenancy Branch