



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, AAT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they received the 1 Month Notice posted on the door of the rental unit by the landlord on October 17, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on October 25, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

### Background and Evidence

The parties signed a six-month fixed term Residential Tenancy Agreement (the Agreement) for the rental of a strata unit on July 12, 2013, for a tenancy that was to run from August 1, 2013 until January 31, 2014. Monthly rent was initially set at \$1,460.00, payable in advance on the first of each month, plus heat and hydro. Following the expiration of the initial term, this tenancy continued on a month-to-month basis. The current monthly rent has increased to \$1,480.00.

The tenant submitted undisputed written evidence that the landlord gave the tenant permission to commence renting the rental unit to the first sub-tenant in December 2013. The first of the tenant's sub-tenants took up occupancy in the rental unit in May 2014; the tenant had moved to another province by that time.

When the first of the tenant's sub-tenants moved out in August 2016, the tenant located another sub-tenant who moved into the rental unit in September 2016. At that time, the tenant co-signed a Form K agreement with the sub-tenant and the landlord. The second sub-tenant vacated the rental unit in June 2018.

Although the tenant once more identified a new sub-tenant who entered into what the tenant maintained was a one-year fixed term tenancy agreement with the tenant commencing on July 1, 2018, the tenant did not obtain the landlord's written authorization as required by section 34(1) of the *Act*. The current sub-tenant is paying the tenant a monthly rent of \$2,050.00.

After a series of text message and email exchanges between the landlord and the tenant, the landlord issued a 1 Month Notice seeking an end to the tenancy with the tenant/Applicant in this hearing that was to take effect on November 30, 2018. The sole reason identified on the 1 Month Notice is as follows:

*Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end immediately and that the tenant will no longer have possession of the rental unit.
2. The tenant agreed to provide the landlord with the contact information for the sub-tenants as soon as possible.
3. The landlord agreed to contact the sub-tenant currently residing in the rental unit as soon as possible to enter into a new tenancy agreement with the sub-tenant commencing on December 1, 2018 and lasting until June 30, 2019, at a monthly rental rate of \$1,480.00, payable in advance on the first of each month.
4. The tenant agreed to return the sub-tenant's post dated cheques to the sub-tenants by registered mail or by a form of tracked messages as soon as possible.
5. The tenant agreed to return the sub-tenant's security deposit to the sub-tenants by electronic means as soon as possible.
6. The landlord agreed to return the security deposit for this tenancy to the tenant as soon as possible.
7. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion.

### Conclusion

To give legal effect to this settlement, I find that this tenancy has ended and the tenant has no rights of a tenant regarding this rental unit. As the tenant does not have possession of the rental unit presently and the landlord is entering into a new tenancy agreement directly with the current occupants, no Order of Possession is required.

I order the tenant to provide the landlord with the contact information for the sub-tenants currently occupying the rental unit as soon as possible.

To implement the terms of settlement, I order the landlord to contact the sub-tenants currently occupying the rental unit as soon as possible so as to enter into a new residential tenancy agreement with the current occupants/sub-tenants for a fixed term not to be less than the period from December 1, 2018 until June 30, 2018, and for a monthly rent not to exceed \$1,480.00, plus whatever additional charges for utilities that the current sub-tenants pay.

I order the tenant to return the sub-tenants' post-dated cheques to the sub-tenants as soon as possible by registered mail or some form of tracked message service delivery.

I also order the tenant to return the sub-tenants' security deposit to the sub-tenants by electronic means as soon as possible .

I order the landlord to return the security deposit for this tenancy to the tenant as soon as possible.

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 30, 2018

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Residential Tenancy Branch