



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties confirmed that they had exchanged their documentary evidence.

### Issues to Decide

Should the Notice to End Tenancy be cancelled? If not, should the landlord be entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

### Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began on October 1, 2016 with the current rent payable of \$1350.00. The landlord testified that the original agreement was to have the subject tenant and his dog move into the unit. The landlord testified that in 2017 the tenants' girlfriend and her son moved in. The landlord testified in June 2018 the girlfriends other son and his dog moved in as well. The landlord testified that the tenant did not obtain permission to sublet the unit. The landlord testified that the subject tenant continues to reside in the unit. The landlord

testified that he has issued a second notice based on numerous other grounds but seeks to end this tenancy based on the following ground:

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

The tenant gave the following testimony. The tenant testified that he has not sublet the unit as he still resides in it. The tenant testified that the landlord gave him verbal authorization to take on other occupants. The tenant testified that the landlord advised him that it wasn't necessary to add the occupants to the tenancy agreement.

### Analysis

The Definitions section of the Residential Tenancy Act categorizes a sublease agreement as follows:

**"sublease agreement"** means a tenancy agreement

(a) under which

(i) the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and

(ii) the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and

(b) that specifies the date on which the tenancy under the sublease agreement ends;

I find that the tenant has not moved out of the unit. The tenant has not assigned or transferred any of his rights or obligations to another party. Both parties confirmed that the named tenant on the tenancy agreement continues to reside in the unit. Based on the above, I find that the tenant has not sublet out the rental unit as described by the landlord. Based on the above, I find that the One Month Notice to End Tenancy for Cause dated January 6, 2019 with an effective date of February 10, 2019 is cancelled. The notice is of no effect or force. The tenancy continues.

The tenant is also entitled to a one time rent reduction of \$100.00 from the next rental payment for the recovery of the filing fee.

Conclusion

The notice to end tenancy is cancelled. The tenancy continues.

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: February 26, 2019

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Residential Tenancy Branch