



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      AS, LRE, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- an order to allow an assignment or sublet when permission has been unreasonably denied;
- an order suspending or restricting the Landlord's right to enter;
- an order of the Landlord to comply with the Act, Regulation and/or tenancy agreement; and
- recovery of the filing fee.

The Tenants, D.T. and R.T., and two agents for the Landlord, K.L. and M.W. ("Agents") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and Agents were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

The Parties agreed that they received the Application and/or documentary evidence from each other in advance of the hearing. However, the Tenant, D.T., expressed concern that he did not know who the Agents were and that the Landlord's evidence came from an address other than that set out in the tenancy agreement.

The Agents said that they had been to the rental unit and met the Tenants prior to the hearing. Further, the Agents had submitted copies of their Powers of Attorney executed on January 4, 2018, allowing them to act on the Landlord's behalf in matters concerning the rental unit. The Agents said that the Landlord is a Chinese woman who does not

speak English; they said their appointments make it easier for the Tenants to have any tenancy-related needs addressed as soon as possible.

The Agents said they attended the rental unit and explained to the Tenants that the Landlord had moved since she signed the tenancy agreement. The Agent, M.W., said that they told the Tenants that the Landlord had moved, and she also said she personally served the Tenants with the Application. She said: "He knows me. I think we should focus on the issues before us here." The Agents said they have met with the Tenants on more than one occasion and attended the rental unit to serve the Tenants in person on March 4 and 8, 2019.

The Tenant, D.T., continued to insist that he did not know who the Agents were, although he acknowledged that he had met with them when they attended the rental unit to discuss matters and serve documents. The Tenant said he is accustomed to communicating with a different Agent, who is the son of the Landlord and the husband of the Agent, M.W. The Agents, K.L. and M.W., said that the Landlord executed four powers of attorney for four different relatives, so that there would always be someone to represent her, should the Tenants need anything. The Agent, M.W. said that her husband was unavailable when the hearing was scheduled, but that she and K.L. were ready and able to respond to the Tenants' concerns and the Application at the hearing.

The Tenant stated: "Until we have the tenancy agreement revised, we have no counter party addressing us." He said this was because the Landlord's address in the tenancy agreement is different from that set out in the Landlord's reply to the Tenants' Application. I informed the Tenant that I was satisfied that the Agents had advised the Tenants of the Landlord's new address. Further, I also said I found the Agents' powers of attorney to be sufficient evidence for them to represent the Landlord in these matters; the hearing proceeded. Throughout the hearings, I repeatedly cautioned the Tenant to address the issues for which he applied for dispute resolution, rather than peripheral and/or irrelevant matters.

#### Issue(s) to be Decided

- Are the Tenants entitled to an order allowing an assignment or sublet when permission has been unreasonably denied?
- Are the Tenants entitled to an order suspending or restricting the Landlord's Right to Enter the Rental Unit?

- Are the Tenants entitled to an Order for the Landlord to Comply with the Act, Regulation and/or Tenancy Agreement?
- Are the Tenants entitled to recover the cost of the Application filing fee?

### Background and Evidence

The Parties agreed that the tenancy operated under a fixed term tenancy agreement running from June 1, 2018 to May 31, 2021. The Parties agreed that the Tenants paid the Landlord a monthly rent of \$3,950.00, due on the first day of each month and that the Tenants had paid a security deposit of \$375.00 and no pet damage deposit. The Parties agreed that this was a second tenancy agreement between them. The Parties agreed that the Landlord had purchased the residential property from the Tenants and rented it back to them. They agreed that the Tenants had lived in the residential property for more than 10 years before the Landlord purchased it.

### Assignment or Sublet

The Tenant said the rental property had a separate suite in it that they rented out, as landlords. The Tenant said that when the Parties signed the current tenancy agreement, one of the Agents said that the Tenants could no longer rent out the suite, even though someone was living there at the time.

The Tenant said:

In 2018 a new tenancy agreement was executed and we were told that we could not rent the suite out; it was tenanted at the time. We were told that we could not rent the house again. She was telling us that we can't rent out the suite again. I was contacted by [A.], I don't know why [A.] is not on the call. [A.] told me recently that yes we could rent out the suite. My wife and I don't handle investor relations; we only contracted with one party. We accepted only [A.] to represent [the Landlord].

The Agent, K.L., said that he was not sure if the Tenant meant he wanted to rent out the whole residential property or just the room downstairs. The Agent said:

If he's about just renting the room downstairs, we were aware of that and we never forbade the tenant from having a renter. On May 18 [2018] they talked to us about the room rental. If it is about renting the entire rental unit, we're not

aware of that. Subsection 9 [of the tenancy agreement] has clauses on assigning or subletting, but we were never informed of his desire to rent out the entire rental unit, to whom, on what terms and for what amounts. It is just straight on the agreement that we have with him. In either case, neither is accurate. We have never refused, but we think it's our right to understand who the sub-tenant would be.

Paragraph 9 in the tenancy agreement states:

9. ASSIGN OR SUBLET

- 1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of six months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.
- 2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the *Residential Tenancy Act*.

This is consistent with section 34 of the Act on assignment and subletting.

The first hearing was adjourned at this point, as we had run out of time. Much of the time was taken up with the Tenant's unwillingness to accept and recognize that the Agents in attendance were authorized to represent the Landlord.

The hearing was reconvened and the same Tenants and Agents attended both hearings.

I started the reconvened hearing by identifying the Parties on the line and indicating that we would address the issues left unfinished in the last hearing. I also noted that there had been new submissions to the RTB system by the Tenant, despite my having directed against this in the interim decision adjourning the hearing. I re-read the sentence in the interim decision in which I said this and advised that I would not be considering the additional materials.

The Tenant expressed his frustration with this decision, because he said that a "senior person" in the Burnaby office had told him in January 2019 that he could add new

issues to the hearing after it was already started and at any time after his application was submitted. He wanted to add the issue of repairs that he was calling an emergency (there were problems with fences on the property).

As calmly and respectfully as possible, I said there must have been some miscommunication, because that is not how the adjournment process works. He accused me of not knowing what I was doing and this went on for a few minutes. I noted that he had applied for dispute resolution on February 1, 2019, but that he did not apply for any repairs at that point. I tried to move the hearing to the first of the remaining issues to be resolved.

The Agents said they were not aware of the Tenants' concern with the fences on the residential property, but that they would be in contact with him to address any problems.

Unfortunately, the Tenant was again focused on and insistent that he did not know who the people on the call were, despite their having repeatedly explained their relation with the Landlord and that they have powers of attorney, which legally authorize them to represent her. The Agents also reminded the Tenant of occasions in which he had met them at the rental unit.

Despite my attempts to have him explain his application for restricting or suspending the Landlord's right to enter, the Tenant started to talk about the tax implications of having the Landlord live in China. The Agents assured him that the Landlord is currently in China for a visit, but that she lives in Vancouver.

The Agents said that the Tenant had served the Landlord with the Application and documentary evidence at her former address, which was on the tenancy agreement, despite the Agents having visited the rental unit and telling him that the Landlord has moved. He would not accept that this was a possibility. He insisted that the Landlord lived in China when the tenancy agreement was executed and he wanted to know about the implications of having to hold back a portion of his rent payments, because the money was going to China. He started to digress even further into the possibility that there was fraud going on, and he said he was going to report me to the Canada Revenue Agency, because I was not addressing these issues. I advised the Tenant that such issues were beyond the scope of the dispute resolution proceeding and that I did not have authority to resolve these matters under the Act.

I warned the Tenant more than once that if he did not address the issues for which he had applied for dispute resolution that I would have to end the hearing. During the

Tenant's testimony, the Agents inserted comments when it seemed appropriate to assure him that there was nothing fraudulent going on. They also reminded him of the occasions on which they met him on prior to the hearing. However, the Tenant ignored what they said and repeated his concerns about who the Landlord was and where she lived. Ultimately, after multiple warnings, I told the Tenant that I was ending the hearing and he immediately hung up.

The Agents were still in the teleconference call and said that they would have ended the hearing sooner and not tried so hard to direct the Tenant to the issues before us, as I had done. I told them that it was inappropriate to continue talking to them without the Tenant being on the line, with which they agreed, and I ended the teleconference at 35 minutes.

### Analysis

The purpose of the dispute resolution process at the Residential Tenancy Branch is to resolve parties' residential tenancy disputes, pursuant to the Act, regulation and tenancy agreement. Parties apply for dispute resolution, making claims about issues they want resolved. Parties submit documentary evidence prior to the hearing, and give testimonial evidence in the hearing addressing the claims they have made in their applications.

In this hearing, the Tenant repeatedly digressed to matters unrelated to his claims and refused to comply with my re-direction back on point. Further, once the hearing was adjourned and despite my clear direction in the Interim Decision, the Tenant applied for a new claim and submitted new documentary evidence.

Pursuant to section 62(4)(c):

(4) The director may dismiss all or part of an application for dispute resolution if

...

(c) the application or part is frivolous or an abuse of the dispute resolution process.

Further, Rule 6.10 gives an arbitrator the authority to manage the hearing and the parties, in order to maintain proper decorum and efficiency of the hearing:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing disrupting the hearing will not be permitted. The arbitrator may give directions to

any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Accordingly, given the Tenant's disruptive behaviour in the hearing and unwillingness to address the issues for which he had applied despite my repeated warnings, I find the Tenant's behaviour in the hearing amounts to an abuse of process and I dismiss his Application without leave to reapply.

### Conclusion

The Tenant refused to accept my authority in the hearing, and despite my repeated warnings, the Tenant refused to address the issues about which he had applied for dispute resolution. As a result, I find the Tenant's behaviour amounted to an abuse of process, so I dismiss his Application without leave to reapply.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 30, 2019

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Residential Tenancy Branch