



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC AS FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated April 25, 2019 (“1 Month Notice”), for authorization to sublet the rental unit, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The landlord confirmed that they did not submit any documentary evidence in response to the tenant’s application. The landlord also confirmed that they received the documentary evidence from the tenant and had the opportunity to review that evidence prior to the hearing.

### Preliminary and Procedural Matter

The tenant confirmed their email address at the outset of the hearing. As the landlord stated that they don’t have an email address, the parties also confirmed their understanding that the decision would be emailed to the tenant and sent by regular mail to the landlord.

### Issues to be Decided

- Should the 1 Month Notice cancelled?
- Should the tenant be granted permission to sublet the rental unit?
- Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

At the outset of the hearing, the landlord first stated the rental unit was incorrect and later changed their testimony and confirmed that the rental unit address is correct. The landlord also stated that the tenant was not a tenant, and later changed their testimony to confirm that the tenant is in fact a tenant, and that the landlord continues to accept rent from the tenant.

The tenant testified that she pays \$1,600.00 per month to the landlord for the monthly rent. The landlord did not dispute the amount claimed by the tenant.

The parties agree that a 1 Month Notice dated April 25, 2019 was received by the tenant on April 27, 2019, and had an effective vacancy date of May 27, 2019. The tenant filed to dispute the 1 Month Notice on May 6, 2019. The 1 Month Notice alleges one cause. The cause alleged is:

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

The landlord confirmed that the landlord did not submit any documentary evidence to support the cause being alleged in the 1 Month Notice and instead was relying on the tenant's evidence. As the landlord failed to provide a copy of a tenancy agreement, I find that the landlord has provided insufficient evidence that a tenancy agreement prevents the tenant from subletting the rental unit. In addition, the tenant does not agree with the cause listed in the 1 Month Notice and writes in the application that she has been subletting since 2013 without any issues as long as rent was being paid, which it has been, and that no previous eviction notice for subletting has been issued until now.

### Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of May 27, 2019. The tenant disputed the 1 Month Notice on May 6, 2019, which is within the ten day timeline provided for under section 47 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in

support of the 1 Month Notice and neither party submitted a copy of the tenancy agreement. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find the landlord has provided insufficient evidence to prove that the cause listed on the 1 Month Notice is valid. Therefore, I **cancel** the 1 Month Notice dated April 25, 2019, as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid. Consequently, the 1 Month Notice is of no force or effect and I find there is insufficient evidence before me to support that a signed tenancy agreement exists between with a clause that prohibits the tenant to sublet the rental unit.

**I ORDER** the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to sections 67 and 72 of the *Act*, in the amount of **\$100.00** to recover the cost of \$100.00 filing fee.

**I authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from the tenant's July 2019 rent, in full satisfaction of the tenant's recovery of the cost of the filing fee pursuant to sections 67 and 72 of the *Act*.

### Conclusion

The 1 Month Notice issued by the landlord dated April 25, 2019, is cancelled.

As a result, the 1 Month Notice is of no force or effect.

The tenancy shall continue until ended in accordance with the *Act*.

The decision will be emailed to the tenant and sent by regular mail to the landlord.

The tenant has been authorized a one-time rent reduction in the amount of \$100.00 from the tenant's July 2019 rent, in full satisfaction of the tenant's recovery of the cost of the filing fee.

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: June 18, 2019

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Residential Tenancy Branch