



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPC, CNC, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for cause and for the recovery of the filing fee. The tenant applied to cancel the notice to end tenancy.

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. The tenant represented herself and was accompanied by her advocates. The landlord was accompanied by her agent.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started in October 2005. The monthly rent is \$1,560.00 payable on the first of the month. Prior to moving in the tenant paid a security deposit of \$750.00. The rental unit consists of a three-bedroom suite located on the upper level of a duplex. A copy of the tenancy agreement was filed into evidence.

The landlord testified that on June 10, 2019, she met two females looking for the address of the rental unit and thereby found that the tenant was letting a room for use by listing the availability of a room on Airbnb. On June 13, 2019, the landlord served the tenant with a notice to end tenancy for cause.

The reason for the notice was:

- Tenant has assigned or sublet the rental unit without landlord's written consent

The tenant disputed the notice in a timely manner and stated that upon receiving the notice she cancelled her listing, pending reservations and her business licence.

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove that the tenant has sublet or assigned the rental unit without the landlord's consent.

*Residential Tenancy Policy Guideline#19* addresses assignments and sublets.

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the *Act* does not support a landlord/tenant relationship between the tenant and the third party.

The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

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. In determining if a scenario such as this is a sublet as contemplated by the *Act*, the arbitrator will assess whether 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 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.

In this case the tenant rented out a room in the rental unit for short periods of time without getting the written consent of the landlord. The landlord issued a one month notice to end tenancy for the tenant's failure to obtain the landlord's written consent to "sublet". However, I find that since the tenant remained in the rental unit and allowed the occupants/roommates to move in on a temporary arrangement without a formal tenancy agreement, I find that the relationship between the original tenant and the temporary occupant does not constitute a landlord/tenant relationship.

Based on the above, I further find that since the tenant continues to occupy the rental unit while she rents a room to temporary occupants, this rental arrangement is not a sublet as contemplated by the Act. Accordingly, the notice to end tenancy is set aside and the tenancy will continue.

Since the landlord is not successful in her application, she must bear the cost of filing her application.

### **Conclusion**

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

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: August 01, 2019

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Residential Tenancy Branch