



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, MNDCT, OT, FFT

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated August 29, 2019
- b. A Monetary Order in the sum of \$3700.
- c. An order for other relief
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on August 30, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord as the landlord acknowledged service. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated August 29, 2019?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order for other relief?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The parties entered into a fixed term tenancy agreement that provided that the tenancy would start on April 15, 2019 and end on April 30, 2020. The tenancy agreement

provided that the tenant(s) would pay rent of \$1350 plus \$125 for utilities per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$675 and a pet damage deposit of \$675 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

...

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

The written tenancy agreement includes the following terms:

- 13. ADDITIONAL OCCUPANTS. Only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above, who, without the landlord's prior written consent, resides in the rental unit or on the residential property in excess of fourteen cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this Agreement...
- "16. ASSIGN OR SUBLET. 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 and has 6 months or more remaining in the term, the landlord must not unreasonably withhold consent....."
- 19. OCCUPANTS AND INVITE GUESTS. The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests. If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Act.

The owner of the property lives in the upstairs portion. The tenant rents the suite in the basement. There is a guest room in the basement which the owner uses from time to time.

The tenant testified that he has not sublet or assigned the rental property. He has had two visitors from Germany who stayed with him for one night and slept in his camper. He has had two friends from the interior who stayed in their camper van for two nights. In both cases he introduced them to the owner. In June his mother stayed in the guest room for 4 days with the permission of the owner. In August other friends stayed in the guest room for 3 days with the permission of the owner.

The owner did not appear at the hearing. He provided a short statement that states "My tenant NH brings strangers he meets at SD to my property. This is a remote location and I fear for my safety with not knowing who is on my property. He has also been subletting his RV while plugging into my hydro."

Application to Cancel the one month Notice to End Tenancy:

Analysis:

Policy Guideline #19 includes the following:

**B. ASSIGNMENT**

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

**C. SUBLETTING**

**Sublets as contemplated by the *Residential Tenancy Act***

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

After carefully considering all of the evidence I determined there is no basis to end the tenancy based on the grounds set out in the Notice to End Tenancy. The tenant has not assigned or sublet the rental unit or rental property. The friends who stayed in camper for 2 nights and the two individuals who stayed in his camper are guests. This does not amount to an assignment or sublet.

As a result I ordered that the one month Notice to End Tenancy dated August 29, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Tenant's Application for a Monetary Order.

The tenant claimed the sum of \$3749 for the cost of materials (\$712) and his labour (\$3037 (67.5 hours @ \$45 an hour) for the cost of building a studio. He stated that he had a verbal agreement with JM that he wouldn't pay any extra rent if he paid for the materials and did the labour. The agreement provided that he could use the studio. The tenant testified the owner has threatened him and is very abusive. Further, he feels that it is not his space and he has only used it for 3 or 4 hours as the owner comes down and harasses him.

The agent for the landlord provided a statement that included the following:

"When the tenant approached the owner about the studio, the owner said he could use it at no additional cost if he paid for the materials and labor. The tenant did pay for the materials and labor, but it was to benefit him, not the owner so he could set up his own t-shirt business that he started. Once the tenant leaves, the owner will have to remediate the studio as the tenant chose a strong mustard colour."

Analysis:

I dismissed the tenant's claim for a monetary order. I determined there was no agreement between the parties that the landlord would pay for the work done by the tenant. The agreement provided that the tenant could use the studio at no additional cost in the form of rent but the landlord did not agree to pay for the costs of material or labour. I determined the tenant failed to prove he is entitled to a monetary order and as a result I dismissed this claim.

Conclusion:

I ordered that the one month Notice to End Tenancy be cancelled. I dismissed the tenant's claim for a monetary order. As the tenant has been partially successful with this application I determined the tenant is entitled to recover half of the cost of the filing fee. I ordered that the landlord pay to the Tenant half of the cost of the filing fee in the sum of \$50 such sum may be deducted from future rent.

**This decision is final and binding on the parties.**

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: October 29, 2019

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Residential Tenancy Branch