



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AS, LRE, FFT

### Introduction

On October 29, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking an order to be allowed to assign or sublet the tenancy and to suspend for set conditions on the Landlords right to enter the rental unit. On November 28, 2019, the Tenant amended the application to include a dispute of a One Month Notice to End Tenancy for Cause.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties testified that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the One Month Notice to End Tenancy for Cause. The remaining claims are dismissed with leave to reapply.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on June 1, 2014 and is on a month to month basis. Rent in the amount of \$776.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$362.00.

The Landlord testified that he issued the Tenant a One Month Notice to End Tenancy for Cause dated November 23, 2019 ("the One Month Notice"). The One Month Notice provides the following reasons for ending the tenancy:

- *Tenant has allowed an unreasonable number of occupants in the unit/site.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*
- *Tenant has assigned or sublet the rental unit/ site without the Landlord's written consent.*

The One Month Notice provides information for tenants who receive the Notice. The Notice states that a tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on November 5, 2019 within the required time period.

The Landlord provided testimony in support of the reasons to end the tenancy. The Landlords testimony included the following:

- the Tenant is breaching a material term of the tenancy agreement.
- the tenancy agreement provides that only the person listed shall occupy the unit.
- the unit is for single occupancy only.
- there is a woman and child living in the unit.
- the Tenant did not ask permission to have another occupant live in the unit.
- the Landlord issued the Tenant a warning letter on November 8, 2019
- after serving the warning letter the Tenants friend was seen on the property.
- the Landlord overheard the Tenants guest say she is living there.

In reply, the Tenant testified that he has his friend stay in his unit as his guest on eight or nine occasions when he goes out of town. The Tenant testified that his friend stays for three to four

days and up to a week. The Tenant testified that he has not sublet the rental unit, and his friend has her own residence elsewhere.

The Tenant's friend provided testimony. Ms. D.M testified that she is not subletting the rental unit. She testified that she has been going to the unit off and on for years. She testified that the Landlord chased her out of the Tenant's unit and called the police. She testified that she pays rent for her own residence elsewhere.

The Tenant testified that he is living in the rental unit and has not entered into a sublet agreement. He testified that he has not breached the tenancy agreement.

The Landlord testified that they want the Tenant to stop having his friend in the unit when the Tenant is not around.

### Analysis

Residential Tenancy Policy Guideline #19 Assignment and Sublet is intended to help the parties understand issues that are likely to be relevant and what information or evidence is likely to assist them in supporting their position. The Guideline provides an explanation of Assignment, Subletting.

### 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. Under section 34 of the Act, a Tenant must not assign a tenancy agreement unless the Landlord consents in writing.

### Subletting

A Tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the Landlord.

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). 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.

Section 30(1) of the Act provides that a Landlord must not unreasonably restrict access to residential property by;

- (a) the tenant of a rental unit that is part of the residential property, or*
- (b) a person permitted on the residential property by that tenant.*

Section 9 of the Residential Tenancy Regulation provides that a Landlord must not stop a 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.

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

I find that the Tenant has not assigned or sublet the rental unit without the Landlord's consent. I find that the Tenant lives in the rental unit and therefore the definition of a sublet or assignment does not apply to the situation as described by the Landlord and Tenant.

A Tenant who permits a guest onto a rental property is responsible for the activity and actions of the guest. While I understand the Landlord's concern for the safety and security of the rental property, and for enforcing a single occupancy term of a tenancy agreement; the Landlord does not have the authority to restrict access to a person permitted on the residential property by the Tenant.

I find that it is sufficient that the Landlord is made aware that the person on the property is a guest of the Tenant, and the Tenant and guest are under no further obligation to provide any other personal details to the Landlord.

I find that it is reasonable for the Tenant to allow a friend or guest to occasionally stay in the rental unit when he is out of town.

I find that there is insufficient evidence from the Landlord to establish that the Tenant's guest is living in the rental unit on a full-time basis.

I find that the Landlord has provided insufficient evidence to establish that the Tenant has breached the Act, or tenancy agreement, and that the tenancy should end.

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated November 23, 2019 is successful. The One Month Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

### Conclusion

I find that the Landlord has provided insufficient evidence to establish that the Tenant has breached the Act, or tenancy agreement, and that the tenancy should end.

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated November 23, 2019 is successful.

The tenancy will continue until ended in accordance with the Act.

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: December 18, 2019

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Residential Tenancy Branch