



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL MNDCL MNDL-S MNRL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant attended with her lawyer, CJ ("the tenant"). The landlords attended. All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

### *Preliminary Issue # 1*

The tenant denied timely service of the Notice of Hearing and Application for Dispute Resolution and requested an adjournment. The landlords did not consent to the application.

The landlords stated that the tenant did not leave a forwarding address. The landlords testified they sent the documents to the tenant by registered mail sent on September 6, 2019. The address to which they sent the documents is the address of the tenant which

was inscribed in a trucking company invoice left by the tenant in the unit dated August 4, 2019, the only address they had for her.

The tenant acknowledged that the address on the invoice was the address on her provincial driver's license but denied that the address was current. She stated that the invoice was for the moving company used when she vacated the unit.

The landlords testified they then sent an email in October 2019 to the tenant asking for her current address. The tenant acknowledged receipt of the email and stated that she did not reply.

The tenant testified that she received a notice from the RTB in December 2019 advising her of this hearing time and date. The tenant stated this was the first she heard of the hearing. The tenant's lawyer CJ contacted the landlords by email on December 18, 2019. On December 19, 2019, the landlords personally served CJ with the Notice of Hearing and most of the documents. The remaining documents were served on December 24, 2019.

The tenant objected to the sufficiency of the service stating that the landlords did not include key documents such as the Monetary Order Worksheet in the initial service. The

tenant requested an adjournment to allow more time to prepare her submissions and to bring an application against the landlords.

The landlords stated they did not agree to an adjournment, that they had been waiting for months for the hearing and wanted matters to proceed.

I considered the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I have considered the testimony of both parties which took almost 30 minutes at the beginning of a 2-hour hearing. I find there is no likelihood of the parties reaching a resolution if an adjournment were granted as positions were clearly entrenched and fixed.

I find the tenant, who requested the adjournment, refused the landlord's request to provide her forwarding address, thereby delaying service intentionally. The tenant acknowledged refusal to provide her address in October 2019.

I find the tenant received most of the documents when personal service was made on her lawyer on December 19, 2019 and these are the only documents I will consider in the hearing. I find the tenant has had ample time to review the documents and prepare

her submissions. I find the tenant is not disadvantaged in any way by proceeding with the hearing and may still bring an Application.

I deny the tenant's request for an adjournment.

### *Preliminary Issue # 2*

During the hearing, the parties agreed that the landlords could retain the tenant's security deposit of \$1,975.00 in full satisfaction of the landlord's claim under section 67 excluding the landlord's claim for outstanding rent.

Accordingly, the landlord withdrew the landlords' claims except for claim for compensation for outstanding rent for the month of August 2019 and reimbursement of the filing fee.

### Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent for the month of August 2019 under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

### Background and Evidence

The parties agreed as follows:

- The landlords leased the unit from Y, a copy of the lease agreement not having been submitted ("the first agreement");
- With the consent of Y, the landlords entered into an agreement with the tenant on October 15, 2018 for rent of \$3,750.00 payable monthly on the first of the month ("the subject agreement");
- The subject agreement is in the RTB standard form;
- The subject agreement has an "X" in section 2(C) which states:  
C) and is for a fixed term ending on 31 August 2019;
- The subject agreement has an "X" in section 2(D) which states:

D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term;

- The first agreement and the subject agreement “mirror one another” [landlords’ testimony]; that is, the terms of both are the same except for the names of the parties;
- The landlords and Y entered into a Mutual Agreement to End Tenancy under the first agreement in which their tenancy would end on August 31, 2019., a copy of which was submitted;
- In an email dated June 30, 2019 from the landlords to the tenant, the landlords wrote as follows:

*Please accept this email as written confirmation that your tenancy will end of August 31, 2019 at 1pm at [address]. [Y and landlords] have agreed to mutually end tenancy as per our rental agreement....*

*As outlined in the Residential Tenancy Act: The sub-tenant’s contractual rights and obligations are as set out in the sublease agreement. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.*

*In addition to our mutual agreement to terminate the tenancy, unfortunately there is not an opportunity to open into a new tenancy agreement directly with [Y] as her daughter and partner intend to move into the property in the fall.*

*am sorry that we were not able to extend the tenancy longer for you and I hope that by providing 2 months notice will ensure that you and your family are able to find a suitable new home for September 2019.*

- The landlords did not receive a Two Month Notice to End Tenancy for Landlord’s use;
- The landlords testified they did not receive any compensation from Y for the termination of the tenancy;
- The landlords testified they paid rent of \$3,750.00 to Y for the month of August 2019;

- The tenant did not want to vacate the unit and sent an email to the landlords dated August 22, 2019, stating in part:

*And you misled me from the beginning that this was to be a long term rental. It cost me thousands to move my entire family in and out in less than a year, leaving us with very few resources left. And this is causing untold injury to my 90-year old mother, as I know you are well aware.*

- The tenant believed she was entitled to one month's rent as compensation for ending the tenancy under the first agreement;
- The tenant did not pay rent due August 1, 2019;
- The landlords issued a Ten-Day Notice to Vacate for Non-Payment of Rent in early August 2019;
- The tenant did not dispute the Notice and vacated on August 13, 2019.

The landlords request a monetary order in the amount of the outstanding rent for August 2019.

The tenant asserted the subject agreement was an assignment of the lease and therefore the tenancy could not be ended without one month's rent as compensation under the provisions of the Act; hence, the tenant was not responsible for the payment of rent for August 2019.

The landlords stated that the subject agreement was a sub-lease; the sub-lease ended without any necessity of paying compensation when the first agreement ended by the Mutual Agreement. The landlords paid the rent for August 2019 to Y under the first agreement and the tenants were obligated to pay the landlords as well.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties' submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. The hearing lasted two hours.

I have considered section 1 of the Act which defines "sublease agreement" as follows:

*"sublease agreement" means a tenancy agreement  
(a) under which*

- (i) the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and*
- (ii) the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and*
- (b) that specifies the date on which the tenancy under the sublease agreement ends;*

I have also considered *Policy Guideline # 19: Assignment and Sublet* which states in part as follows:

*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.*

...

*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 subtenant 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.*

...

***Unlike assignment, a sublet is temporary.** In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, **the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter.** The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic*

*tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.*

...

**Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve some period of time at the end of the sublease, the agreement likely amounts in law to an assignment of the tenancy rather than a sublease; an arbitrator may make that determination in a hearing.**

(emphasis added)

Considering all the evidence in this case, the Act and the Guideline, I find that the subject agreement was an assignment and not a sub-lease. I base my decision on the following:

1. The subject agreement is not for a shorter period – even one day - than the first agreement, as acknowledged by the landlords;
2. In the subject agreement, the tenant does not agree to vacate the unit on a specific date to allow the original tenant (the landlords) to move back into the rental unit;
3. The subject agreement was not temporary;

While the tenant paid rent to the landlords, I find that the payments were based on a misunderstanding between the parties of the difference between a sub-lease and an assignment. As stated, I find the subject agreement was an assignment and not a sub-lease although the parties may have called it by the latter term.

Accordingly, I find the relationship of landlord-tenant is between Y and the tenant.

I find that the landlords had no authority to enter into a Mutual Agreement to End Tenancy with Y. I find the tenant did not give the landlords authority to end the tenancy on her behalf, as acknowledged by both parties. I find the landlords improperly ended the tenancy to allow Y and family to occupy the unit without Y having to issue the required Two Month Notice under which the tenant would be entitled to one month's rent as compensation.

I therefore dismiss the landlords' application for compensation for rent for the month of August 2019 pursuant to section 67.



The landlords' application is dismissed without leave to reapply.

Conclusion.

The landlords' application is dismissed without leave to reapply.

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: January 03, 2020

---

Residential Tenancy Branch