



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES  
LTD and [tenant name suppressed to protect  
privacy]

## **DECISION**

### **Dispute Codes**

AS

### **Introduction**

On January 21, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act"), to be allowed to assign or sublet and the landlord's permission has been unreasonably withheld. The matter was set for conference call.

Both the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they 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.

### **Issues to be Decided**

- Is the landlord unreasonably withholding permission to assign or sublet?
- If so, should the Tenants be allowed to assign or sublet their tenancy?

### **Background and Evidence**

The testimony of both parties was that the tenancy began on July 1, 2019, as a one-year fixed-term tenancy, at will role into a month to month tenancy at the end of the

initial fixed term, on June 30, 2020. Rent in the amount of \$1,850.00 is to be paid by the first day of each month, and the Tenant paid the Landlord a \$925.00 security deposit at the beginning of the tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that they plan on travelling to Europe for six to seven months and that the Landlord has refused to allow them to sublet their tenancy while they are away. The tenants testified that they had planned their first trip to begin this spring and that they had wanted to get approval to sublet for six months starting April 1, 2020. However, due to the current travel restriction, imposed due to the COVID-19 pandemic, they want to amend that request to get approval to sublet for six months starting April 1, 2021.

The Tenants testified that they had informed the Landlord of their plan to travel and their plan to sublet while they were away to the Landlord during the application process to rent the property and when they signed the tenancy agreement. The Tenants testified that the Landlord had assured them both during both meetings that subletting was a possibility under their tenancy agreement.

The Tenants testified that when they approached the Landlord to get written approval to sublet, they were surprised to find out that the Landlord would not permit them to sublet. The Tenants submitted an email string between themselves and the Landlord into documentary evidence.

When asked, the Tenants testified that they plan on subletting the rental unit with their personal possessions remaining in the rental unit.

The Tenants testified that they feel the Landlord misrepresented the sublet clause to them and that they should be granted permission.

The Landlord submitted a copy of the tenancy agreement into documentary evidence, show that sublet would be considered during the fixed term tenancy with more than 6 months remain in the tenancy, as per the *Act*.

### Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I accept the agreed-upon testimony of these parties and the email evidence that the Landlord has refused to approve the Tenants' request to sublet the rental unit. I also accept the agreed-upon testimony of the parties to this dispute that the initial fixed term

of this tenancy agreement ends on June 30, 2020. Section 34 of the Act states the following regarding subletting:

**Assignment and subletting**

**34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

The Residential Guideline 19. Assignment and Sublet section C, provides further guidance on the Landlord's requirement to consider a tenant's request to sublet during a tenancy.

**C. SUBLETTING**

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.

I have reviewed the tenancy agreement and email string between the Tenants and the Landlord regarding the Tenants' request to sublet, and I find that the Landlord refused the Tenants' request for permission to sublet as there were less than 6 months remaining in the fixed term of this tenancy and that the requested term of the sublet would extend passed the original fix term of this tenancy agreement.

Pursuant to section 34(2) of the Act, as this tenancy has less than 6 months remaining on the fixed term, I find there is no obligation on the Landlord to consent to the Tenants' request to sublet the rental unit. Consequently, I dismiss the Tenants' application.

Conclusion

I dismiss the Tenants' application.

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: March 24, 2020

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Residential Tenancy Branch