



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

The tenant filed an Application for Dispute Resolution on January 6, 2020 seeking an order to cancel the One Month Notice to End Tenancy for cause (the "One Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on March 5, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and the landlords attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlords confirmed receipt of the Notice of Dispute Resolution, delivered by the tenant in person to the building manager on January 7, 2020. A witness to the delivery by the tenant provided a written statement to confirm this transaction. The building manager confirmed this in the hearing. The landlord also confirmed they received a copy of the documentary evidence presented by the tenant.

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### Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One Month Notice to End Tenancy for Cause?

Should the tenant be unsuccessful in cancelling the Notice, is the landlord entitled to an order of possession, pursuant to section 55 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed the evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a copy of a tenancy agreement signed by the parties on December 11, 2017 for a 1-year fixed term tenancy beginning on December 16, 2017 that converted to a month-to-month tenancy on December 16, 2018 for a monthly rent of \$1,200.00 due on the 1<sup>st</sup> of each month with a security deposit of \$600.00 paid.

The landlords' position in this hearing is that the tenant was subletting the unit to a third party. They rely on the evidence of the December 17, 2019 letter written by the third party that attached a receipt which contains the word "diposit" [sic]. The content of the December 17, 2019 letter is that "[The tenant] has rent [sic] a room to me. . ." The letter also contains the following: "[The tenant] did not write any rent contract with me in spite I asked her to write a contract."

The landlords also spoke to the communication between the themselves and the tenant regarding this issue. In the hearing they stated that the tenant never provided a letter to them to explain that the arrangement was not a sub-let.

The representative of the tenant spoke to the issue directly and made oral submissions in the hearing. The representative provided translation on the direct testimony of the tenant who was present.

The position of the tenant is that they did not at any time sublet the premises. A letter of January 6, 2020, penned by the tenant's representative in this matter, also provides that the tenant hosted the third party "as a guest beginning in Oct 2019."

The tenant also presented a letter dated February 16, 2020 wherein the third party retracts statements previously made in the letter of December 17, 2019.

In testimony, the tenant stated that the reason for the receipt signed by the tenant is that there was a down payment for a vehicle sale. The tenant stated that there was no separate tenancy agreement; if the situation was a sublease, there should have been some sort of formal agreement. The tenant's representative pointed to section 34 of the *Act* which states: "Unless the landlord consents in writing, a tenant must not . . . sublet a rental unit."

Also, the tenant's representative provided in submissions that the tenant explained the situation to the building manager. This occurred at the time the landlord served the One Month Notice. The building manager replied: "we have documents". The tenant maintains that there

was no prior conversation about this, and the issue only came to light when the landlord served the One Month Notice.

### Analysis

Section 47 (1)(i) of the Act provides that a Landlord may end a tenancy by giving a One Month Notice to end the tenancy if the tenant “purports to . . . sublet the rental unit without first obtaining the landlord’s written consent as required by section 34.”

Section 1 of the *Act* gives the definition of “landlord” as:

- a) the owner . . . agent or another person who, **on behalf of the landlord**,
  - (i) permits occupation. . . under a tenancy agreement, or
  - (ii) exercises powers
  
- c) a person, **other than a tenant occupying the rental unit**, who. . .
  - (ii) exercises any of the rights of a landlord . . . in relation to the rental unit

In this analysis, I am also informed by Residential Policy Guideline 19: Assignment and Sublet. This is a statement of the policy intent of the legislation, in line with statutory interpretation and the common law. The Guideline assists with the definition of “sublet” as found in the *Act*, noting: “. . .under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublet agreement.”

In this matter, the landlords bear the onus to prove that the reason for ending the tenancy is valid and sufficient.

Based on the evidence and testimony before me, I find as fact there was no sublet agreement in place between the tenant and third party. This precludes the landlords from issuing the One Month Notice.

The third party stated that there was no written agreement in place for the situation in which she rented a room from the tenant. In and of itself this does not disprove the existence of a separate tenancy agreement; however, it allows me to give weight to the evidence of the tenant on this point. This consists of the two third party letters before me: that of February 16, 2020 wherein the third party states “I . . . have been in her home as a guest.”; and that of December 17, 2019, containing the statement “[The tenant] has rent [*sic*] a room to me. . .”

The copy of the \$400.00 receipt -- produced by the landlords as evidence of a sublet situation - is of no consequence. Whether the third party was staying as a guest of the tenant or was in fact paying money for the rental of a room in the rental unit, I find both scenarios stand as proof that the tenant was present in the same unit the entire time. The landlord has provided no evidence to the contrary that outweighs this evidence.

The landlord did not provide evidence to show they investigated the claim that a person was subletting. This also detracts from the weight of their evidence. I accept the evidence of the tenant on this point and find that there was no conversation about the situation to verify whether there was a sublet agreement in place. Instead, the landlord took to serving the One Month Notice to the tenant on January 4, 2020.

From this I conclude there was no agreement on a formal arrangement whereby the tenant violated a term of the tenancy agreement regarding the sublet of the rental unit. The situation at hand is that of a roommate or occupant with no evidence in place to show the tenant moved out of the rental unit.

With reference to the definition of "landlord" in the *Act*, I find there is neither evidence that the tenant was acting on behalf of the landlord; nor is there evidence to show the tenant was *not other than* a tenant occupying the same rental unit. As such, with no contractual arrangement in place, there is no sublet.

For these reasons, I order the One Month Notice to be cancelled.

### Conclusion

For the reasons above, I order the One Month Notice issued on January 4, 2020 is cancelled and the tenancy remains in full force and effect.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 25, 2020

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Residential Tenancy Branch