



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPN FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession pursuant to section 55; and
- recover his filing fee from the tenant.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution form and supporting evidence package. The tenant did not submit any documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover their filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month-to-month tenancy agreement starting August 1, 2019. The rental unit is a three-bedroom apartment. Monthly rent is \$1,700 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$850, which the landlord continues to hold in trust for the tenant.

The parties agree on all relevant facts of this case.

In February 2020, the tenant rented out one of the bedrooms to NA (full name on the cover of this decision). The tenant continued to reside in the rental unit. The parties characterized this arrangement as a “sub-let”.

On June 22, 2020, the tenant served the landlord with written notice that he is ending the tenancy on July 31, 2020.

The landlord has applied for an order of possession, as he is unsure if NA will move out on the July 31, 2020 as well.

The tenant does not oppose the landlord’s application.

At the hearing, the landlord agreed to withdraw his claim for the filing fee.

### **Analysis**

Despite being characterized a “sub-let”, the arrangement between the tenant and NA is not a sublet agreement within the meaning of the Act. Residential Tenancy Branch Policy Guideline 19 states:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

The use of the word ‘sublet’ can cause confusion because 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 sublease agreement. ‘Sublet’ has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply

[emphasis original]

As such, NA is a roommate of the tenant, and has no rights under the Act.

Accordingly, once the tenant vacates the rental unit, NA does not have any right under the Act to remain in the rental unit.

Section 45(1) of the Act permits a tenant to end a month-to-month tenancy by giving the landlord at least one month's written notice. The tenant gave such a notice on June 22, 2020, with an effective date of July 31, 2020. Accordingly, the tenancy shall end on July 31, 2020.

As such, and as the tenant does not oppose the making of such an order, I order that the tenant and all other occupants on the rental unit (which includes NA) deliver full and peaceable vacant possession and occupation of the rental unit to the landlord by July 31, 2020 at 1:00 pm.

The landlord is reminded of his obligations under section 38 of the Act regarding the security deposit.

As the landlord has withdrawn his claim for it, I decline to order that the tenant reimburse the landlord the filing fee.

### **Conclusion**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by July 31, 2020 at 1:00 pm.

I order the landlord to provide a copy of this decision at the attached order to all occupants of the rental unit, including NA, immediately upon its receipt.

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: July 20, 2020

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Residential Tenancy Branch