



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPT, FFT**

### Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- An order of possession for the applicant pursuant to section 54; and
- Authorization to recover the filing fee for this application from the respondent pursuant to section 72.

The applicants attended the hearing and were represented by one of the co-applicants, QS (hereinafter referred to as the “applicant”). The respondent was represented at the hearing by an agent, CC (“respondent”). As both parties were present, exchange of documents was confirmed. The respondent acknowledged service of the applicant’s Application for Dispute Resolution and stated he had no issues with timely service of documents.

### Preliminary Issue

At the commencement of the hearing, the applicant advised me that he misnamed one of the applicants as the respondent in this proceeding. He sought to amend his application to reflect the actual landlord of the rental unit. The respondent was not opposed to changing the application and I allowed the amendment in accordance with section 64 of the Act. The name of the actual property owner is reflected on the cover page of this decision.

### Issue(s) to be Decided

Does the applicant have standing to bring this application?

### Background and Evidence

The applicant gave the following testimony. He, and the co-tenants arrived Canada recently and answered an advertisement seeking tenants in a house. The house is primarily a rooming house containing self-contained rooms sharing common facilities.

The applicants exchanged information with the person they believed was the landlord through WeChat, a social media platform. No formal tenancy agreement was entered into between the applicants and the person holding herself out to be the landlord, WM. In evidence, however there is a partial tenancy agreement signed by one of the co-applicants and another person said to be the husband of WM. The applicants testified that neither WM nor her husband ever occupied any rooms in the house.

The applicants commenced living in the house on October 20, 2019 under the agreement held with WM and the applicants testified the agreement was extended twice. The last extension happened when the covid-19 pandemic emerged, and the applicants agreed to rent the entire house to prevent WM from renting out the remaining vacant rooms in the house. Each of the applicants paid a full years worth of 'rent' to WM, up to June 20, 2021.

On June 30, 2020, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted to the door of the rental house from the actual landlord of the house. It states that WM failed to pay \$4,000.00 that was due on March 1, 2020. A letter dated June 27, 2020 from the homeowner was attached to the Notice stating WM's contract with her ended a year ago, but WM kept the house without paying rent until 4 months later. The applicants submit that they were unaware that WM was not the actual landlord of the property and that they were deceived by WM when she took their rent money up to June 20, 2021.

The respondent's agent gave the following testimony. His client is the actual owner of the rental property. There is a tenancy agreement between his client and WM and WM's husband is not a signatory to the tenancy agreement. WM has failed to pay rent for the property and there is a hearing set for August 18, 2020 to hear the landlord's application to end the tenancy for non-payment of rent. The respondent has given a copy of the notice of hearing to the applicants in this case so that they may attend.

There is no tenancy agreement between his client and the applicants in this case. The respondent's agent was unaware these people were living in the rental unit when the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was being posted to the door of the house. While the respondents may have paid 'rent' money to WM, no money has been given to his client by WM or anybody else. The applicants may be 'sub-tenants' of the actual tenant in this case, WM, however there is no landlord/tenant relationship between his client and the applicants.

Despite this, the agent for the respondent/owner of the property indicated during the hearing that he may be willing to allow the applicants to continue renting the house under a new tenancy agreement if he is successful in obtaining an Order of Possession against the original tenant, WM.

### Analysis

The *Residential Tenancy Act* allows a tenant to assign their tenancy agreement and to sublet their rental unit. In most circumstances, unless the landlord consents in writing, a tenant must not assign or sublet.

Residential Tenancy Branch Policy Guideline PG-19 [Assignment and Sublet] deals extensively with situations where a tenant assigns or sublets a rental unit.

#### **B. 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 s. 34 of the Residential Tenancy Act, a tenant must not assign a tenancy agreement unless the landlord consents in writing.*

#### **C. SUBLETTING**

##### **Sublets as contemplated by the Residential Tenancy Act**

*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. 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.*

Given the evidence before me, I conclude that the original tenant, WM did not assign her tenancy to the applicants in this case. In order to do so, the original landlord must consent to the assignment in writing. I have no evidence before me to show that she did.

It is possible the original tenant, WM may have sublet the rental unit to the applicants, however for this to have happened the period of the sublease must be shorter than the terms of the WM's original tenancy agreement. I find insufficient evidence to satisfy me that this is the case as there is no written record of a sublease agreement between WM and the applicants. Further, the landlord's letter posted to the door of the house with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities indicates the term of the tenancy with WM had ended 'a year ago' making it unlikely the sublease term was less than the term of WM's tenancy agreement.

Even if this was a sublease agreement, as noted in PG-19,

*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.*

Residential Tenancy Branch Policy Guideline PG-13 [Rights and Responsibilities of co-tenants] clarifies the rights and responsibilities relating to multiple tenants renting a rental unit under a tenancy agreement. Parts B and H are relevant to this case.

#### **B. TENANTS AND CO-TENANTS**

*A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement,*

*the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant.*

#### **H. OCCUPANTS**

*If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant.*

*Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant. (emphasis added)*

In this case, I find that the applicants are not tenants since there is no tenancy agreement between the themselves and the actual landlord. While it could be argued that the applicants are sub-tenants, I find that this is not the case since: a) there is no sub-tenancy agreement between the original tenant, WM and the applicants and b) the original term of WM's tenancy with her landlord ended before the term of the sub-tenancy with the applicants.

The applicants in this case are **occupants** as defined by PG-13. As such, they do not have any rights or obligations against the respondent. Since an occupant does not possess the right to bring an application against a landlord, I must dismiss the applicants' application without leave to reapply.

#### Conclusion

The application is dismissed without leave to reapply.

This decision is **legal, final and binding** as 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: August 06, 2020

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Residential Tenancy Branch