



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNE, OLC, FFT, MNDCT**

### **Introduction**

This hearing was scheduled to deal with a tenant's application for cancellation of a Notice to End Tenancy; orders for the respondent to comply with the Act, regulations or tenancy agreement; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement, as amended.

Both parties appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing materials upon each other. The applicants did not have an address to send the respondent registered mail as the respondent did not provide them with her address of residence after moving out the rental unit. The applicants decided to send the registered mail to the rental unit address and sent a text message to the respondent to advise her she had mail. The respondent came to the rental unit in order to retrieve the registered mail. In this circumstance, I deemed the respondent sufficiently served pursuant to the authority afforded me under section 71 of the Act. I confirmed the applicants received the materials sent to them by the applicant. Accordingly, the materials of both parties were admitted and considered in making this decision.

## Preliminary and Procedural matters

### 1. Jurisdiction

The respondent was of the position the *Residential Tenancy Act* (the Act) does not apply to the parties as the respondent was a tenant at the property and not the owner. The respondent was of the position the applicants were “occupants” of the rental unit.

I explored this issue further with the parties.

The applicants testified that they were aware the respondent was the tenant of the basement suite. On October 3, 2021 the respondent moved out of the basement suite and rented a bedroom to them for the agreed upon monthly rent of \$550.00. Another person (“AB”) was provided given occupancy of a different bedroom by the respondent and a third bedroom was left vacant. The applicants took possession of the bedroom on October 3, 2021 and paid the respondent \$550.00. The respondent did not provide them with a written agreement but they understood they would have a long term tenancy based on the respondent’s verbal assurances. The applicants painted the bedroom with the consent of the respondent, provided new flooring, and moved in their belongings slowly through to October 10, 2021. On October 13, 2021 the respondent issued a letter to the applicants informing them that she had ended her tenancy with the owner effective on October 31, 2021. The applicants received the letter via registered mail on October 18, 2021. The applicants moved out on October 28, 2021.

The respondent testified that she rented the basement suite from the owner for several years. The respondent purchased a home and moved out on October 3, 2021. The respondent rented one of the bedrooms in the basement suite to the applicants for \$550.00 per month and AB was in another bedroom. The respondent acknowledged she did not have the consent of the owner to sublet the rental unit. Rather, the respondent explained that it her intention to introduce the applicants to the owner after they moved in and her “plan” was for AB to start a new tenancy with the owner after she ended her tenancy and the applicants would continue to live at the property as roommates of AB. However, AB decided she did not want to continue to live with the applicants so the respondent signed a Mutual Agreement to End Tenancy with the owner on October 13, 2021 with an effective date of October 31, 2021. The respondent prepared the letter described by the applicants and sent it to them by registered mail.

Residential Tenancy Policy Guideline 19: *Assignment and Sublet* provides information and policy statements with respect to subletting a rental unit. The policy guideline provides, in part:

The *Residential Tenancy Act* allows a tenant to sublet their rental unit.

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). 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. 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.

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.

The sub-tenant typically pays rent to the original tenant; but even if he or she fails to do so, the original tenant’s responsibility to pay rent to the landlord is unaffected and the original tenant can be evicted if rent is not paid. Again, it should be noted that there is no contractual relationship between the original landlord and the sub-tenant. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord.

The definition of landlord, under section 1 of the Act, defines “landlord” to include:

- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

The original tenant becomes a “landlord” under a sublease agreement pursuant to the definition of landlord found under paragraph (c), as provided above.

I was provided agreed upon statement of facts that the respondent was and maintained a tenancy relationship with the owner of the property until October 31, 2021; thus, the respondent was entitled to possession of the rental unit through to October 31, 2021. However, the respondent moved out of the rental unit and gave the applicants possession of the space she had rented from the owner. Although the respondent did not obtain the owner’s permissions to sublet, and did not enter into a written sublease agreement with the respondents, section 5 of the Act provides that a party cannot avoid or attempt to contract out of the Act. As such, I find the respondent’s failings to be of no consequence to the applicants.

As for the respondent’s position that the applicants were merely “occupants” of the rental unit, I find this position is inaccurate as the respondent had moved out of the rental unit by the time the applicants took possession of the rental unit. Had the respondent continued to reside in the rental unit then I would have accepted that the applicants were occupants/roommates but that is not the reality of the situation.

Also of consideration, is that it is the respondent that gave the applicants permission to modify the rental unit by painting the walls. Thus, I find the respondent exercised the rights of a landlord in relation to the rental unit.

In light of the above, I find, on a balance of probabilities, that the respondent sublet the rental unit to the applicants and the parties had a landlord/tenant relationship. Therefore, I find the Act applies to the dispute between the parties and I accept jurisdiction to resolve their dispute.

## 2. Issues to resolve and settlement

It was agreed upon that the applicants have vacated the rental unit already. As such, the applicants’ request for cancellation of a notice to end tenancy and orders for compliance are moot as of this date. The applicants confirmed the only outstanding issue is their monetary claim.

During the remainder of the hearing, the parties turned their minds to resolving their dispute by way of a settlement agreement. I have recorded the parties’ settlement agreement by way of this decision and the Monetary Order that accompanies it.

Issue(s) to be Decided

What are the terms of settlement?

Background and Evidence

The parties mutually agreed to the following in full and final settlement of any and all claims with respect to this sub-tenancy:

1. The respondent shall pay to the applicants the sum of \$275.00.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

In recognition of the settlement agreement, I provide the applicants with a Monetary Order in the amount of \$275.00.

Conclusion

The parties reached a full and final settlement agreement that I have recorded by way of this decision. In recognition of the settlement agreement, I provide the applicants with a Monetary Order in the sum of \$275.00.

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: November 23, 2021

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Residential Tenancy Branch