



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** CNC, FFT, RR, MNDCT, DRI, PSF, OLC, RP

### Introduction

This hearing dealt with the tenants' applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover their filing fee for their applications pursuant to section 72.

FNK ("landlord") appeared for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

The tenants confirmed receipt of the 1 Month Notice dated July 19, 2021. Accordingly, I find the tenants deemed served with the 1 Month Notice in accordance with section 88 of the *Act*. Neither party had submitted a copy of the 1 Month Notice in evidence for this hearing. With the consent of both parties, I allowed the landlord to upload a copy of the 1 Month Notice which is to be considered for this application.

### **Preliminary Matter: Are the Tenants Sublessees?**

The tenants filed their applications naming AO as the landlord in this dispute. FNK attended the hearing as a designated agent of AO, and submitted in evidence a signed statement from AO authorizing FNK to appear as agent for this matter.

FNK testified that she is in fact the landlord in this dispute as she has been renting the home from the landlord since 2016, and then in turn had sublet the home to the tenant and their family as of November 1, 2019 for \$5,500.00 in monthly rent as the tenant wanted a larger home. Both parties confirmed that the tenants had previously resided in the home next door, which is owned by the same landlord.

FNK testified that the owner of the home was actually a company, and that FNK assisted the landlord in managing the properties. FNK testified that she had rented this home, and had permission to sublet the home to the tenant and their family. FNK submitted a copy of tenancy agreement which shows a fixed term tenancy for the period of November 1, 2019 through to November 1, 2020. FNK testified that the tenant and their family were to move out at the end of the sublease agreement, but have failed to do so.

The tenant testified in the hearing that although he had dealt with FNK, FNK was acting as an agent for the landlord, and that the tenancy agreement was with AO. The tenant testified that he had also dealt with AO's brother in the past, and the tenant is unsure of who the actual owners of the home was. The tenant disputes that a sublease agreement exists between FNK and the tenants, and that AO was the named landlord, as shown on the tenancy agreement. The tenant submitted a copy of a tenancy agreement which names AO as the landlord, and underneath the landlord's name, FN is noted as an agent. The tenant claims that the tenancy agreement submitted by the landlord is forged.

### **Preliminary Matter: Analysis**

RTB Policy Guideline #19 clearly provides the definition of a “sublet”, which states:

*“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. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant’s interest in the tenancy.*

*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.”*

*“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, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.*

*Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve some period of time at the end of the sublease, the agreement likely amounts in law to an assignment of the tenancy rather than a sublease; an arbitrator may make that determination in a hearing.”*

In consideration of the evidence and testimony before me, I am not satisfied that the landlord had provided sufficient evidence to support that a sublease exists. Although both parties dispute the validity of the tenancy agreements submitted by the other party, I find that the evidence does not support that FNK is in fact the tenant renting from the landlord, and in turn the party who was renting to the tenants.

I find that the copy of the tenancy agreement submitted by FNK is missing the first page, which lists the parties in the tenancy agreement. Although it appears that there are multiple copies or versions of the tenancy agreement, I am not satisfied that any of the tenancy agreements submitted supports FNK's testimony that the tenant and his family are subletting.

I am satisfied that the tenants have been residing at the rental address since November 1, 2019 in exchange for monthly rent of \$5,500.00. I find that the authorization letter submitted by FNK simply shows that the landlord had authorized FNK to appear as agent on behalf of the landlord, and does not confirm that a sublease exists. Accordingly, I find that the tenants have named the proper landlord and tenants in this dispute, and I allow the tenants' claims and applications as applied for.

### **Preliminary Issue – Priority Claims**

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the unpaid rent and One Month Notice to End Tenancy are not sufficiently related to the tenants' other claims. The hearing commenced at 11:00 a.m. and ended at 11:50 a.m. As the time allotted was not sufficient to allow the tenants' other claims to be heard along with the application to cancel the 1 Month Notice to End Tenancy and hear submissions about the preliminary dispute about whether a sublease exists, I exercised my discretion to dismiss the portions of the tenants' application unrelated to the 1 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

### **Issues**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for their applications?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This tenancy began on November 1, 2019, with monthly rent set at \$5,500.00, payable on the first of the month. The tenants paid a security deposit in the amount of \$2,750.00, and a pet damage deposit in the amount of \$2,000.00.

The tenants were served with a 1 Month Notice on July 19, 2021. As noted above, a copy of the 1 Month Notice was submitted by the landlord for this hearing during the hearing, which the tenants confirmed was served on them on July 19, 2021. The tenants dispute the validity of the 1 Month Notice, and notes that the FNK did not have the right to serve the tenants the 1 Month Notice as their landlord.

FNK testified that the tenants have refused to vacate the property despite the fact that the sublease agreement was over, and furthermore the tenants have caused extensive damage to the home and furniture. FNK testified that they were concerned about the amount of electricity consumed by the tenants, and the possibility of a marijuana grow operation on the property, and associated water and mold damage.

### **Analysis**

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application disputing the 1 Month Notice within the required time limit, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice. The 1 Month Notice also must comply with section 52 of the *Act* in form and content.

Section 52 of the *Act* states the following:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) be signed and dated by the landlord or tenant giving the notice,*

*(b) give the address of the rental unit,*

*(c) state the effective date of the notice,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form...*

The 1 Month Notice to End Tenancy dated July 19, 2021 does not comply with Section 52(c) as the Notice does not state the effective date of the Notice. As the 1 Month Notices does not meet the form and content requirements as set out in in section 52 of the Act, the 1 Month Notice is clearly deficient.

I find that the 1 Month Notice had no legal effect because it does not comply with the requirements as set out in section 52(c) of the Act. Under these circumstances, I am granting the tenants' application to cancel the 1 Month Notice as I find the Notice invalid. The tenancy is to continue until ended in accordance with the Act.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Accordingly, I allow the tenant to recover the filing fee for the application pertaining to the 1 Month Notice. As I did not make any findings on the merits of the tenants' other application, the filing fee for the second application is dismissed with leave to reapply.

### **Conclusion**

I allow the tenants' application to cancel the 1 Month Notice dated July 19, 2021. The 1 Month Notice is of no force or effect, and the tenancy is to continue until ended in accordance with the Act.

I allow the tenants to recover the filing fee for the application pertaining to the 1 Month Notice. I allow the tenants to implement a monetary award of \$100.00 by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remainder of the tenants' application with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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 5, 2021