



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AS, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to be allowed to assign or sublet the rental unit and the landlord's permission has been unreasonably withheld and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issue to be Decided

Should the tenants be allowed to assign or sublet the rental unit?

### Background and Evidence

The tenancy began on June 15, 2017, for a fixed length of time of 1 year 15 days, ending June 30, 2018. At the end of the fixed length of time the tenancy may continue on a month-to-month basis or another fixed length of time. Filed in evidence is a copy of the tenancy agreement.

The tenants testified that the landlord is unreasonably withholding consent to be allowed to sublet the rental unit contrary to clause 9 Assign or Sublet in the tenancy agreement which reads as follows:

**9. ASSIGN OR SUBLET**

- 1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.
- 2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the Residential Tenancy Act.

The tenants testified that their tenancy agreement was for a fixed term length of more than six months as it was originally 1 year and 15 days and they are relying upon clause 9 of the tenancy agreement and not the Act, which gives them the right to sublet.

The tenants testified that they have purchased a sailboat and have planned to leave the country for a year while they are sailing outside the country. The tenants stated that they will have Wi-Fi and cellular service while at sea.

The landlord's agent testified that the tenants are not under a fixed term tenancy agreement as it converted to a month-to-month on July 1, 2018. The landlord stated they are not under any obligation under the Act, to allow the rental unit to be sublet as there is not more than 6 months remaining of the fixed term, and the tenant could simply give one month notice to end their tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the tenancy was originally a fixed term tenancy of 1 year and 15 days. However, the parties did not enter into a new fixed term length and the tenancy agreement converted to a month-to-month on July 1, 2018.

**Section 34 of the Act, Assignment and subletting**

**34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) **If a fixed term tenancy agreement has 6 months or more** remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

[Reproduced as written]

Residential Tenancy Regulations **Schedule** (the “Regulation”) 7 Assign or sublet states;

**7 (1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this is a fixed term tenancy agreement and there are 6 months or more remaining in the term, the landlord must not unreasonably withhold consent.** Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.

(2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may make an application for dispute resolution under the *Residential Tenancy Act*.

[Reproduced as written]

The Residential Tenancy Branch Policy Guideline 19 (the “PG”) - Assignment and Sublet reads in part,

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.

[Reproduced as written]

In this case, the tenants want to sublet the rental unit while outside of the country for a period of one year while traveling on their sailboat. I cannot find the landlord is

unreasonably withholding consent under the Act. This is not a fixed term agreement with at least six months remaining, as defined the Act.

This tenancy on July 1, 2018, became a month-to-month agreement. The landlord does not consent to the tenants subletting the rental unit while the tenants are away. I cannot find the landlord is unreasonable withholding consent as there is no requirement under the Regulation that would require the landlord to even consider a sublet agreement on a month-to-month tenancy.

While the PG 19 states that the Act is unclear on this issue as it does not specifically refer to periodic tenancy. While that may be true; however, the PG makes no reference to the Regulation. I find the Regulation clearly states that a sublet of the rental unit can be with the written consent of the landlord if this is a fixed term tenancy agreement and there is six months or more remaining. This is the only time the landlord must not unreasonably withhold their consent to allow a tenant to sublet.

While I accept the tenants want to preserve their residence while they are away for the year travelling; however, it is a personal choice that the tenants made to travel for an extended period of time and not out of hardship of being bound by their obligation under a fixed term agreement. I find there is no provision under the Act or Regulation that that the landlord must consider allowing a tenant to sublet the rental unit when the tenancy is on a month-to-month basis.

Further, even if I accept a sublet lease agreement was allowed on a month-to-month tenancy, which I do not, the tenants would become the landlord under that agreement and have responsibilities as a landlord under the Act. I do not find it would be reasonable for the tenants to become a landlord under a separate agreement when they are not in the country to oversee the tenancy.

Based on the above, I dismiss the tenants' application to be allowed to sublet the rental unit. Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee.

### Conclusion

The tenants' application is dismissed.

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: June 15, 2022

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Residential Tenancy Branch