



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause.

The tenant and the landlord attended the hearing, and the landlord was accompanied by his daughter who attended as agent. The tenant and the landlord's agent each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The landlord has not provided any evidentiary material, and the parties agree that the tenant's evidence has been provided to the landlord. All evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated August 19, 2022 was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on August 1, 2016 and reverted to a month-to-month tenancy after 1 year, and the tenant still resides in the rental unit. The landlord's agent does not know how much the rent is or when it is payable, however testified that on August 1, 2016 the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a full house, and

the landlord does not live on the rental property. There are 3 bedrooms rented to the tenant, the tenant's husband and daughter; or perhaps there are 2 bedrooms and an unfinished basement. A copy of the tenancy agreement has been provided by the tenant for this hearing.

The landlord's agent further testified that the landlord and the landlord's agent personally served the tenant with a One Month Notice to End Tenancy for Cause on August 19, 2022, and a copy has been provided by the tenant for this hearing. It is dated August 19, 2022 and contains an effective date of vacancy of November 19, 2022. The reason for issuing it states: Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The landlord did not approve other occupants, and the tenant told the landlord's agent that roommates were permitted, but the landlord disagrees. Then the tenant said that the landlord was not aware because she was afraid that rent would be increased.

Prior to COVID, the landlord went to the rental property to do repairs and saw someone entering the home, who said that she lived there. The landlord was shocked and surprised that someone else was living there and a few days later spoke to the tenant who admitted that someone was renting with her. When the landlord collected rent the following month, the tenant said she had applied for low income housing, and during COVID, the landlord could not evict. The tenant then informed the landlord that the tenant's income was too high to qualify for low income housing.

The landlord's agent also testified that the landlord wanted to put a basement suite in the lower level, but the tenant disagreed with that, saying she has 2 others living downstairs.

**The tenant** testified that the tenant is not subletting, but shares rent with roommates; there are 4 people living there now and when the tenant moved in. The tenant pays the water bill, and there are no additional costs to the landlord.

The landlord asked the tenant in June, 2018 about a rent increase, and the tenant said that finances were really tight, and the landlord asked if the tenant could get roommates. The tenant ran into an aunt who needed a place to stay, and the tenant had 2 rooms, being 3 bedrooms and a huge recreation room used as a bedroom. The tenant's aunt moved in on July 1, 2018. The landlord told the tenant on approximately the 15<sup>th</sup> of the month shortly after the tenant's aunt moved in, and mentioned an increase in rent; the tenant would collect \$1,000.00 from her aunt and the tenant would keep half and give the other half to the landlord.

The landlord's motivation is to put in a basement suite. The tenant's partner has moved out, and now the tenant resides there with her 7 year old child, the tenant's aunt and her adult son.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause provided by the tenant, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

I refer to Residential Tenancy Policy Guideline #19 – Assignment and Sublet, which states, in part:

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.

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 subtenant 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.

Occupants/roommates: 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. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

In this case, the tenant has not vacated the rental unit, and there is no evidence that the tenant has assigned the tenancy agreement to another person. I also find that the tenant has not sublet as defined in law, but has roommates. I have also reviewed the tenancy agreement, and there is no mention of limiting or prohibiting roommates.

I am not satisfied that the landlord has established that the tenant has assigned or sublet the rental unit without the landlord's consent, and I cancel the One month Notice to End Tenancy for Cause. The tenancy continues until it is ended in accordance with the law.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated August 19, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

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: December 30, 2022

---

Residential Tenancy Branch