



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was reconvened from an initial hearing on December 9, 2022 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- disputing a One Month Notice to End Tenancy for Cause dated September 27, 2022 (the "One Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The original hearing resulted in an interim decision dated December 12, 2022 (the "Interim Decision"), which should be read together with this decision.

One of the Landlords, ML, one of the Tenants, DD, and DD's agent KD attended this reconvened hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties had been unable to reach a settlement of this matter after the original hearing was adjourned.

### Issues to be Decided

1. Are the Tenants entitled to cancel the One Month Notice?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

This tenancy commenced on March 1, 2019 and is month-to-month. Rent is \$1,340.00 per month due on the first day of each month. The Tenants paid a security deposit of

\$660.00 and a pet damage deposit of \$660.00. Copies of the tenancy agreement have been submitted into evidence.

The rental unit is the front suite of the rental property and has two bedrooms and two bathrooms. DD testified that she occupies the downstairs area of the rental unit, while the other Tenant JT resides in the upstairs area.

Copies of the One Month Notice have been submitted into evidence. The One Month Notice is signed by ML and has an effective date of October 31, 2022. The reason for this notice is: "Tenant has assigned or sublet the rental unit/site/property without landlord's written consent". The One Month Notice contains the following details of cause (portion redacted for privacy):

*The tenant, [DD], had sublet the unit to her sister and her boyfriend without landlords knowledge or approval. The unapproved person have lived continuously on the property for about 2 years as per witnesses' testimony. When landlord repeatedly asked about why an unapproved tenant is on the property, he was told that they are just guests which proved to be false and misleading. Also the unapproved subtenants have 2 large dogs that were not approved either.*

The Tenants' application indicates that they received a copy of the One Month Notice via email on September 27, 2022.

ML testified that DD's sister, DD's sister's boyfriend, and their two dogs have been residing in the rental unit since January 2021. ML stated that he confirmed this with JT and other tenants residing in the back suite of the rental property. ML argued that DD had been misleading him about having guests over.

ML submitted that the situation creates an insurance issue for the Landlords. ML testified that he has also received complaints about parties, excessive utility consumption, garbage, and unsanitary conditions caused by pets. ML stated that the unauthorized individuals living at the rental unit are violating the quiet enjoyment of other tenants.

ML referred to clause 8 of the parties' tenancy agreement addendum, which states that "Sublet is allowed only with Landlords' approval".

ML called KT, one of the tenants living in the back suite of the rental property, to testify as a witness during the initial hearing.

KT testified that in the last four or five months, there have been around five to eight individuals living in the rental unit, including DD's sister and DD's sister's boyfriend. KT stated she doesn't see DD very often and doesn't think DD lives at the rental unit at all. KT testified that the individuals in the rental unit would have music blasting usually until 6:00 am. KT stated that there would also be homeless people hanging around in the yard in a tent and people using drugs.

KT testified that there are so many people living at the rental unit that the garbage is full right after emptying. KT stated that she ends up just taking the extra garbage and dumping it herself.

KT stated that she was unsure whether DD was aware of these people coming in and out of the rental unit all the time. KT stated she had nothing bad to say about DD, but that it was the other Tenant, JT, who was having parties until 6:00 am. KT acknowledged that she wasn't sure what JT looks like. KT stated that she saw DD's sister and DD's sister's boyfriend at the rental unit. KT also stated that she saw three men and two women at the rental unit three or four times in the last month. KT stated that she would see the individuals late at night and on the weekends.

ML stated that the utilities are split equally between the front and back suites. ML stated that the latest water bill had been outrageous, but KT was afraid to confront the Tenants about it. KT confirmed that a recent water bill was around \$1,100.00. KT stated that two individuals stayed in a tent for two days in the yard last summer, and that these individuals were DD's sister's friends.

In response, DD argued that the issues relating to partying, garbage, and utilities are not stated on the One Month Notice.

DD testified that in mid-2021, she commenced a relationship with someone living in the next town, where DD works, which is about a 45-minute drive from the rental unit. DD stated that she frequently stays with her partner after work, but that she does not want to lose her own apartment, which is her safe space.

DD stated that she asked her sister to drop by the rental unit to water plants and check on the place. DD testified that JT doesn't come to the downstairs area.

DD stated that her sister would come over on weekends or late nights. DD stated that her sister would stay with her for sleepovers and had permission to stay over when DD was away.

Upon questioning, DD stated that her sister is at the rental unit regularly, most days and evenings, and that her sister stays over three or four nights a week on average, with DD's permission. DD stated that her sister's boyfriend stays some of those nights. DD testified that her sister has a permanent address about 25 minutes away and that her sister's boyfriend rents a one-bedroom suite near the rental unit.

DD denied that she has moved away from the rental unit. DD testified that her belongings, including furniture, art, clothing and toiletries, are still in the rental unit. DD testified that she does not want to sublet, but only to have her belongings watched and taken care of. DD mentioned the crime rate in that area of town and suggested that things go missing from the yard. DD stated she tries to be at the rental unit two nights a week, though she sometimes ends up staying with friends after work. DD stated that about two nights per month, both she and her sister stay at the rental unit together. DD confirmed that her portion of the rental unit has only one bedroom and that her sister uses DD's bed, which they share when they are both there. Upon questioning, DD testified that she does not charge her sister for staying over. DD stated that she occasionally pays her sister for watering plants.

DD stated that the Landlords are asking to raise the rent by too much (from \$1,340.00 to \$1,800.00 per month) to have her sister added to the tenancy agreement.

ML argued that DD is working elsewhere five days a week, using the rental unit for storage, allowing another person to sublet the place, or using the rental unit for partying. ML stated that he does not accept and is not comfortable with this arrangement.

### Analysis

#### *1. Are the Tenants entitled to cancel the One Month Notice?*

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

**Form and content of notice to end tenancy**

- 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,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements of sections 52 and 47(2) of the Act.

I find the Tenants were sufficiently served with the One Month Notice on September 27, 2022 pursuant to section 71(2)(c) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenants had until October 7, 2022 to dispute the One Month Notice. Records indicate that the Tenants submitted this application on October 2, 2022. I find the Tenants made this application within the time limit required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, the reason provided in the One Month Notice corresponds to section 47(1)(i) of the Act, which states:

**Landlord's notice: cause**

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*]; [...]

Section 34 of the Act states:

**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.

According to Residential Tenancy Policy Guideline 19. Assignment and Sublet ("Policy Guideline 19"), an "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".

Based on the Landlords' evidence, including the One Month Notice and ML's testimony, I do not find the Landlords to take the position that DD has assigned the tenancy without permission. I note that in any event, I do not find DD to appear to have "permanently" transferred her rights under the tenancy agreement to a third party, that is, to DD's sister and/or DD's sister's boyfriend. I accept that DD's belongings, including furniture and other personal items, remain in the rental unit. I find DD has access to and continues to reside in the rental unit on a part-time basis. Therefore, I do not find DD to have purported to assign the tenancy agreement at this time.

Policy Guideline 19 states as follows regarding "sublets" as contemplated by the 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.

(emphasis added)

Policy Guideline 19 goes further to explain the difference between a sublet and an additional occupant or roommate as follows:

### **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.

Based on the evidence presented, I find both DD and her sister reside in the rental unit on a part-time basis, with DD's sister generally spending more time at the rental unit than DD. I find DD's sister's boyfriend also visits and stays overnight at the rental unit, though the frequency with which he does so is unclear. I accept that DD's sister and DD's sister's boyfriend have been staying over at the rental unit since 2021. I find it is undisputed that JT has resided in the rental unit at all material times. I find there is insufficient evidence to conclude that other individuals also live at the rental unit. I note KT's testimony is that she had seen others at the rental unit three or four times in the past month, and that she is unsure whether JT is one of those individuals.

I find the living arrangement described above does not constitute a "sublet" as contemplated under the Act. Specifically, I find the Tenants have not granted "exclusive" occupancy of the rental unit to DD's sister (and/or her boyfriend) for a period shorter than the term of the tenancy agreement (i.e. month-to-month, less one day). Furthermore, I do not find DD to have granted "exclusive occupancy" of her portion of the rental unit to her sister and/or her sister's boyfriend. I accept DD's testimony that she sometimes stays at the rental unit by herself or stays at the rental unit with her sister.

As stated in Policy Guideline 19, subletting requires the original tenant to move out, granting exclusive occupancy to the sub-tenant under a sublease agreement, and the sub-tenant must agree to vacate on a specific date to allow the original tenant to move back into the rental unit. If parties are sharing the living space, they cannot, by definition, be in a landlord-tenant relationship as is the case for tenants and sub-tenants.

I conclude that the Tenants have not sublet the rental unit. Rather, I find DD has allowed her sister to become an additional occupant of the rental unit without permission from the Landlords, and possibly DD's sister's boyfriend as well. I note nothing in this proceeding turns on whether DD's sister and her boyfriend are occupants or guests, and I have already determined they are neither sub-tenants nor assignees.

For reference, Residential Tenancy Policy Guideline 13. Rights and Responsibility of Co-Tenants states as follows regarding “occupants”:

#### **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.

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.

(emphasis added)

I note the Landlords’ evidence includes references to other issues such as noise, partying, excessive utility consumption, and garbage. Under section 47 of the Act, a landlord may end a tenancy for various grounds which relate to the problematic conduct of a tenant or an individual permitted on the property by a tenant (regardless of whether such individual is a guest or occupant). However, here the Landlords have not listed any other cause(s) for ending the tenancy on the One Month Notice besides assignment or sublet. I find the One Month Notice also does not allege that the Tenants have allowed an unreasonable number of occupants in the rental unit. Therefore, I am unable to adjudicate those other issues on the merits.

I conclude the Landlords have not proven, on a balance of probabilities, the cause for ending the tenancy as stated in the One Month Notice. Accordingly, I order that the One Month Notice be cancelled and of no force or effect.

*2. Are the Tenants entitled to recover the filing fee?*

The Tenants have been successful in cancelling the One Month Notice. I award the Tenants reimbursement of the filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlords for the month of February 2023.

Conclusion

The Tenants' application to dispute the One Month Notice is successful. The One Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act, the regulations, and the parties' tenancy agreement.

Pursuant to section 72(2)(a) of the Act, the Tenants are authorized to deduct a one-time amount of \$100.00 from rent payable to the Landlords for the month of February 2023, on account of the filing fee awarded.

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: January 24, 2023

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Residential Tenancy Branch