



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding COLDWELL BANKER PRESTIGE  
REALTY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD MNEVC MNETC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on February 14, 2023. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both of the Landlords named on this application and one of the Tenants attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The parties explained that there are two parties named as the Landlord on this application. S.A. is the owner of the rental unit, who leased the unit to a different company ("Chambers Properties"). Chambers Properties in turn hired Coldwell Banker Prestige Realty (CBPR) to sublet the rental unit and find and manage sub-Tenants. These sub-Tenants filed this application against both the owner, S.A., and CBPR. The sub-Tenants had a lease agreement with CBPR.

Both parties in attendance for the Landlord, CBPR and S.A, confirmed receipt of the Tenants Notice of Dispute Resolution Proceeding and evidence package. However, both CBPR and S.A. stated that they were not given all the fact sheets and instructions the Tenants were supposed to include. They only received the Notice of Dispute Resolution Proceeding and evidence from the Tenants. The Tenants had no evidence to prove what was in the packages they mailed to the Landlords. I am not satisfied the Tenant sufficiently served the related fact sheet documentation to the Landlords, which should have been part of the packages. However, I am satisfied the Landlords were sufficiently served with the Notice of Dispute Resolution Proceeding document and evidence. Both CBPR and S.A. appeared willing and able to proceed in the hearing, and neither of those parties articulated how not receiving the fact sheet was in any way

prejudicial to them. It appears both Landlords named on this application were able to prepare and serve separate evidence packages, in response, without issue.

Although the Tenants should have served all of the documents, including related fact sheets, I find there is little to no evidence showing there would be any prejudice in proceeding in the absence of this service.

The Tenant acknowledged receipt of the respective packages from each of the Landlords named on this application. No further service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matter #1

The Tenants stated that they have received the security and pet deposit back, and they wish to withdraw their application for the return of the deposits. Accordingly, I hereby amend the Tenants' application to remove this ground.

Further, I note the Tenants applied for the following ground:

- *I want compensation because my tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the landlord has not complied with the Act or used the rental unit/site for the stated purpose (MNETC)*

However, both parties confirmed that the Tenants were not served with any 2, 4, or 12 month Notice to End Tenancy. The Tenants explained that this ground, and amount of \$26,000.00 is based on some of their expenses incurred as a result of having to move. However, I note the Tenants applied for this type of compensation under the incorrect ground, and their application does lay out sufficient particulars for the claimed amount. The Tenants failed to provide any breakdown of the claimed amount, and I find it would be prejudicial to allow the claim under this ground to proceed, given the above.

Pursuant to section 59(5)(c) of the *Act*, because the tenant's application did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the *Act*, I dismiss the Tenants application for the above noted ground, with leave to reapply. However, the Tenants are advised to provide full particulars of any claim they make.

The only remaining ground on the application will be addressed further below.

## Preliminary Matter #2

Legal counsel for S.A. argued that I do not have jurisdiction to hear this claim, since it is for an amount beyond what the Act allows. However, I note this application was filed pursuant to section 51, and 51.1 of the Act, and compensation under these sections is excluded from the Small Claims limit of \$35,000.00. This is noted in section 58(2)(a) of the Act.

S.A.'s legal counsel also argued that S.A. has no contractual relationship with the applicant, since the applicant is a sub-Tenant, and does not have any lease agreement with the owner. I note the following relevant portion of the Policy Guideline #19:

### **C. SUBLETTING**

#### ***Sublets as contemplated by the Residential Tenancy 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.*

As noted above, and generally speaking, a subtenant can file a claim against the original Tenant, and not the Landlord/owner, since there is no contractual relationship

between the subtenant and the owner. However, it is worth noting that there are several ways an individual can meet the criteria of being a "Landlord" under the Act, as follows:

***"landlord"***, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
  - (i) permits occupation of the rental unit under a tenancy agreement, or*
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (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;*
- (d) a former landlord, when the context requires this;*

Generally, there are very limited ways for a subtenant to pursue a claim against the owner, as the subtenant has an agreement with the Tenant, not the owner. However, given there are numerous ways to meet the definition of a Landlord under the Act, and for a Landlord/Tenant relationship to exist, each case and application must be determined individually, based on the nuances and specifics of the case, the agreements in place, and the relationship between the parties. The specifics of the one remaining ground on this application will be addressed further below.

#### Issue(s) to be Decided

- Are the Tenants entitled to compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term?

#### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to

determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

S.A. provided legal submissions, affidavits, and evidence. This included a copy of the head lease agreement whereby the rental unit was leased to Chambers Properties for a fixed term from July 1, 2020, until August 1, 2022. On or around July 2020, S.A. gave permission to Chambers Properties to sublet the rental unit. Chambers Properties hired CBPR to manage the rental unit. Following this, CBPR entered into a tenancy agreement (the sublease agreement) with the applicants, N.R. and D.R. (herein referred to as the subtenants).

This first sublease agreement was set for August 1, 2020, with a fixed term expiring April 30, 2021. This sublease was extended to July 31, 2021. Then, the subtenants signed a new sublease agreement for a period from August 1, 2021 to April 30, 2022. The parties also signed and agreed to extend the second sublease until July 31, 2022.

The head lease was provided into evidence by the owner, S.A., and copies of the sublease agreements were also provided into evidence. Both copies of the sublease agreements specify that it was a sublease, and that the subtenants would have to vacate at the end of the fixed term. This term was initialled by the parties.

The second sublease was not extended beyond July 31, 2022, because the head lease expired on August 1, 2022. CBPR stated that the sublease agreements were never intended to extend beyond July 31, 2022, since it was always to be a sublease, and because this was one day before the head lease expired.

The subtenants tried to ask for a copy of the head lease, but were never provided a copy of it until they were served with the evidence as part of this proceeding. The subtenants feel that this was not a valid sublease agreement because the owner, S.A., rented the unit under a head lease to a company which he controls, Chambers Properties. The subtenants feel the owner set this tenancy up to evade renter protections and to try and increase rent beyond what was allowable.

S.A. stated that the subtenants were always aware this was a sublease and that they would have to vacate at the end of the term, and he denies that they ever agreed to extend the sublease beyond July 31, 2022.

S.A. asserts that since there was a valid head lease, that the sublease agreements were in full compliance with the RTA, and the tenancy ended by way of section 44(1)(g)

of the Act. Both parties named as Landlords deny that they breached the RTA or any of the sublease agreements.

Both parties agree that the tenancy started on or around August 1, 2020, the start of the first sublease agreement, and ended on July 31, 2022, which was the end of the second and subsequent sublease agreement.

### Analysis

The subtenants are seeking 12 months compensation, pursuant to section 51.1 of the Act based on the following ground:

- *I want compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term*

I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

#### **F. VACATE CLAUSES**

*Under section 13.1(2) of the Residential Tenancy Regulation, the circumstances in which a landlord may include a requirement that the tenant vacate a rental unit at the end of a fixed term tenancy agreement are that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.*

*A tenant may apply for an order for compensation under section 51.1 of the RTA if the landlord included a vacate clause in a fixed term tenancy agreement and at the end of the fixed term, that landlord or their close family member:*

- *Have not taken steps to occupy the rental unit with a reasonable period after the tenancy ended, or*
- *Did not occupy the rental unit for at least 6 months' duration beginning within a reasonable period after the date the tenancy ended (the 6 month period is set by section 13.1(3) of the Residential Tenancy Regulation).*

**See Part C above** for guidance on how “reasonable period” is interpreted.

*Unlike sections 51(2) and 51.4, the onus is on the tenant to prove on a balance of probabilities that the landlord or close family member has failed to meet the obligations set out above. If the tenant establishes this, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.*

*Under section 51.1(2) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances. The onus is on the landlord to establish there are extenuating circumstances.*

I have reviewed the totality of the situation before me, including the relevant testimony and evidence, and I note that section 51.1 of the Act is only triggered if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term.

Section 97(2)(a.1) states the following:

***Power to make regulations***

*97 (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:*

*(a.1) prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term;*

Section 13.1 of the Regulations speak to the prescribed circumstances, as follows:

***Fixed term tenancy — circumstances when tenant must vacate at end of term***

*13.1 (1) In this section, "close family member" has the same meaning as in section 49 (1) of the Act.*

*(2) For the purposes of section 97 (2) (a.1) of the Act [prescribing circumstances when landlord may include term requiring tenant to vacate], a circumstance in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term is that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.*

*(3) For the purposes of section 97 (2) (a.2) [prescribing period of time for which a circumstance prescribed under paragraph (a.1) must be*

*satisfied] of the Act, the period of time for which the circumstance prescribed under paragraph (a.1) [prescribing circumstances when landlord may include term requiring tenant to vacate] must be satisfied is 6 months.*

I note the only prescribed circumstances under the Regulations, relating to ending a tenancy pursuant to a fixed term vacate clause, is when the Landlord indicates they wish to move back in and use the rental unit themselves. This term also has to be initialled and agreed to up front. However, in this case, there is insufficient evidence to show that this situation meets the above noted criteria, necessary to trigger compensation under section 51.1. There is no evidence that the owner or landlord asked for the tenancy to end so that he or his close family could move in as the primary purpose for ending the tenancy by way of the fixed-term vacate clause. Rather, it appears, as per the sublease agreements provided into evidence, that the subtenants were made aware they would need to vacate at a certain date because of the fact it was a sublease. In other words, I do not find this tenancy ended in a manner which triggers section 51.1 of the Act, and I find it ended because it was a sublease agreement, pursuant to section 44(1)(g) of the Act. I find there is insufficient evidence showing that these were invalid sublease agreements.

This portion of the subtenants' application is dismissed, without leave.

### Conclusion

The subtenants' application for 12 months compensation is dismissed, in full, without leave to reapply.

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: February 16, 2023

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Residential Tenancy Branch