



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes: CNC LRE OLC FFT

### **Introduction**

The Tenants seek an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (“Act”).

The Tenants seek an order suspending or restricting the Landlord’s right to enter the rental unit pursuant to section 70 of the Act.

The Tenants seek an order that the Landlord comply with the Act, the regulations, or the tenancy agreement pursuant to section 62 of the Act.

The Tenants seek to recover the application fee pursuant to section 72 of the Act.

Pursuant to Rule 2.3 of the Rules of Procedure all claims for relief, except for the claim related to the Notice and the claim related to the application fee, are dismissed with leave to reapply. The dismissed claims are, I find, unrelated to the primary claim.

### **Issues**

1. Are the Tenants entitled to an order cancelling the Notice?
2. If not, is the Landlord entitled to an order of possession?
3. Are the Tenants entitled to recover the cost of the application fee?

### **Background and Evidence**

In reaching this decision, while I have considered all of the parties’ evidence and submissions, I only refer to what is necessary to explain this decision. As an aside, the style of clause now includes the names of both Tenants, as they appear in the Notice.

The tenancy began May 1, 2020. Rent is \$2,030 and the Tenants paid a \$1,100 security deposit. In evidence is a copy of the written tenancy agreement.

On October 25, 2022, by email and by being posted on the door of the rental unit, the Landlord served the Notice. A copy of the Notice was in evidence, and on page two the Landlord indicated that the tenancy was being ended because the "Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent."

The Landlord's agent testified under oath that in 2021 it was their belief that two Caucasian males were residing in the rental unit. In November 2022 the Landlord conducted an inspection of the rental unit and encountered a "young woman" in the rental unit. The agent also testified briefly about the presence of a middle-aged woman in the rental unit.

It is the Landlord's position that the Tenants do not, and never have, resided in the rental unit and that the Tenants are subletting the property. They are subletting without the Landlord's written permission, which is required under the tenancy agreement.

The Tenant testified under oath, through their translator, that they have no knowledge of the two Caucasian males, and that no evidence is provided to prove that they lived in the rental unit. Regarding the young woman who was seen in the rental unit, the Tenant testified that she was (or is) an employee of the corporate Tenant and that she sometimes stays in the rental unit.

Further, the Tenant testified that there have been no fines, penalties, or proof of any breach of the strata bylaws that might be related to an unauthorized sublet. It is the Tenant's belief that perhaps the Landlord's motive in issuing the Notice is to rent the property out at a much higher rent.

In rebuttal, the Landlord's agent remarked that "it is obvious she's renting it out to someone else" because the Tenant was uncertain as to the exact amount of the rent. Further, they argued that the alleged "break in" occurred because the Tenant did not receive the Landlord's notice about entry into the rental unit and therefore did not have time to warn the sublet tenant about the inspection.

The Landlord referenced sublease advertisements, which included the Tenant's translator's phone number. (However, the advertised properties are not that of the rental unit, it is noted.)

### Analysis

When a tenant disputes a notice to end a tenancy the onus, or obligation, to prove the reason for issuing that notice falls on the landlord. The standard of proof is on a “balance of probabilities,” which means that it is more likely than not that the facts occurred as claimed, and which thus form the basis on which a notice was given.

Pursuant to section 47(1)(i) of the Act, a landlord may end a tenancy by giving notice to end the tenancy if

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]*.

This is the section of the Act under which the Notice was given.

After carefully considering the Landlord's evidence, in conjunction with the Tenant's testimony, I am not persuaded that the Landlord has proven a section 47(1)(i) basis on which the Notice was given.

Beyond a rather dated notice to end tenancy from 2021, there is little, if any, documentary evidence to support the agent's testimony, submissions, and argument that the Tenants have sublet the rental unit. There is but one observation of “a young woman” being present in the rental unit. Yet, there is no evidence to conclusively prove that the young woman actually occupies the rental unit. Indeed, it is entirely plausible that the young woman is really just an employee of the corporate Tenant and that they simply stay there from time to time. Guests are, after all, permitted under the tenancy agreement.

For these reasons, it is my finding that the Landlord has not proven the ground for issuing the Notice and as such it is my order that the Notice, dated October 25, 2022, be cancelled forthwith. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

The Tenants are awarded \$100 to pay for the cost of the application fee. Pursuant to subsection 72(2)(a) of the Act the Tenants may deduct \$100 from the next rent payment in full satisfaction of this award.

Conclusion

The Tenants' application is granted, in part. The Notice is hereby cancelled.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 15, 2023

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Residential Tenancy Branch