



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      AS, OLC, FFT

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 65 that the tenant be permitted to assign or sublet the rental unit;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

R.S. appeared as the Tenant. F.F. and R.Y. appeared as the Landlord’s property manager. L.Y. appeared and was identified as the Landlord’s owner.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Issues to be Decided

- 1) Should the tenancy agreement be assigned or sublet after the Landlord unreasonably withheld consent for doing so?

- 2) Should the Landlord be ordered to comply with the *Act*, Regulations, or the tenancy agreement?
- 3) Is the Tenant entitled to her filing fee?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed that the Tenant moved into the rental unit in August 2020. I am provided with a copy of the tenancy agreement, which lists that the tenancy is for a fixed term ending on August 14, 2021. The parties advise that the tenancy has continued on a month-to-month basis.

The Tenant testifies that in October 2022 she requested the Landlord's consent to sublet the rental unit for one month while she was on vacation in the months of November and December 2022. The Tenant confirms she still resides in the rental unit and advised that she is seeking a general order that she be permitted to sublet the rental unit prospectively should she be away while travelling.

Under s. 65(1)(g) of the *Act*, the Director may order that the tenancy be assigned, or the rental unit sublet, should the landlord be found to have unreasonably withheld consent for doing so under s. 34(2). Section 34(1) of the *Act* specifies that unless a landlord consents in writing, a tenant must not assign the tenancy or sublet the rental unit. However, under s. 34(2) of the *Act* if the tenancy is for a fixed term and there are 6 months or more remaining on the term, the landlord must not unreasonably withhold consent for assigning or subletting the rental unit.

In this instance, there is no dispute that this is not a fixed term tenancy having reverted to a monthly periodic tenancy after August 2021. The Tenant argued she would be willing to sign a new fixed term tenancy agreement if she could sublet her rental unit. However, there is no new tenancy agreement, this is not a fixed term tenancy, and the Landlord is under no obligation to sign a new tenancy agreement. Accordingly, I find that the Landlord is under no obligation to agree to assign or sublet the rental unit. The Tenant's application is dismissed without leave to reapply.

I further note, I would have declined to grant the order in any event as the Tenant is not looking for a specific assignment or sublet, rather an open door consent that she be permitted to do so prospectively. That is, in my view, contrary to ss. 34 and 65 of the *Act*, which contemplate specific circumstances (ie. I wish to end my term early and have found someone to take over my lease) rather than a general consent which would fundamentally alter the terms of the tenancy and deprive the Landlord an opportunity to assess the appropriateness of a prospective individual.

I asked the Tenant to provide submissions on her claim under s. 62 of the *Act* that the Landlord comply with the *Act*. I was advised by the Tenant that this portion of her application is a continuation of her claim dealing with the subletting issue. Given that this is not an independent claim, I dismiss the Tenant's claim under s. 62 of the *Act* without leave to reapply.

### Conclusion

I dismiss the Tenant's claims under s. 65 and 62 of the *Act* without leave to reapply.

The Tenant was unsuccessful in her application. I find she is not entitled to her filing fee. I dismiss the Tenant's claim under s. 72 of the *Act* 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: April 20, 2023

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Residential Tenancy Branch