



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding MCGILL WEST INVESTMENTS  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AS, OLC, FF

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for authorization to assign or sublease the tenancy, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the cost of the filing fee.

The tenants, the tenant's legal counsel (counsel), and the landlord's representative/director (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue about service of the other's evidence or the tenants' application.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital submitted prior to the hearing, and make submissions to me.

I have reviewed the evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, with a view to brevity, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters-

The applicant, NM, who is listed as a tenant, is not a tenant of this tenancy. NM is a potential tenant, which will be more fully set out in this Decision.

Issue(s) to be Decided

Is the tenant entitled to the relief outlined above and recovery of the cost of the filing fee?

Background and Evidence

Multiple tenancy agreements were filed in evidence. The tenancy originally began on July 1, 2020, for a fixed-term, ending on June 30, 2021. A subsequent written tenancy agreement showed the tenancy was renewed for a start date of July 1, 2021, for a fixed-term through June 30, 2022. The listed tenants were the tenant here, AR, and another tenant, SQ, and their guarantors.

The evidence showed that the tenants requested that at the end of the fixed-term of June 30, 2022, the tenancy continue on a month-to-month basis. The landlord agreed.

In their application on the request to assign the tenancy agreement, the tenant, AR, wrote the following:

*My old roommate moved out. My current lease permits me to assign a new roommate to the lease. The Landlord wants me to sign an all-new lease at a significantly increased rent. The Landlord approved my new roommate to sign a new lease, but refused to let me assign her to the existing one. This demand violates our lease agreement and the law. the landlord has unreasonably withheld consent to assign the new roommate. The new roommate has been denied access to the suite to move in.*

[Reproduced as written]

As to the second issue for an order for landlord's compliance, the tenant wrote the following:

*The current lease agreement permits me to assign a new roommate, "for which consent will not be unreasonably withheld." The landlord has unreasonably withheld consent. The Landlord's attempt to compel me to sign a new lease at*

*significantly increased rent violates the Act. Details of the facts are outlined in the attached document.*

[Reproduced as written]

In reading the description of the issues, I find the issues relate to the same matter.

According to the oral and documentary evidence and submissions, in January 2023, SQ provided the landlord with written notice that they were vacating the rental unit on February 28, 2023, which was the date SQ did vacate.

As the tenant AR could not afford the entire rent, they sought a replacement for SQ to move into the rental unit. NM is to be the replacement for SQ, as they were approved by the landlord as a new tenant. The landlord, however, required that NM and AR sign a new tenancy agreement together, for a new fixed-term and increased rent above what AR and SQ were paying.

Counsel submits that the landlord is unreasonably withholding their consent to assign the tenancy agreement for the sole reason of significantly increasing the monthly rent. Counsel submits that clause 12 in the tenancy agreement allows the tenant to assign their tenancy agreement and the tenant requests that clause be enforced.

Evidence filed by the tenant included email correspondence between the parties, SQ's notice to vacate, and counsel's written submission.

#### Landlord's response

The landlord provided a written statement of their position to which they referred in the hearing, reproduced in part as follows:

##### **Landlord's Position:**

The Tenant, in her Dispute filing, has suggested that the Residential Tenancy Agreement is not at an end and that the Landlord must approve of an assignment from the Tenant that gave Notice to Vacate. The Tenant has also suggested that an individual named [ ] is also a tenant.

Firstly, [ ] is not a tenant of [ ]. This individual was approved to become a tenant subject to a new tenancy agreement being signed by [ ]

[redacted] and [redacted]. As [redacted] refused to sign the new tenancy agreement, [redacted] was advised that we are not proceeding with the tenancy at this time. The Landlord has neither accepted or received a security deposit or payment of rent from [redacted] and a new Residential Tenancy Agreement has not been signed.

Secondly, the Tenant is disputing that the tenancy was at an end when one of the two tenants gave Notice to Vacate. Please note the following:

- 1) Section 5 of the Residential Tenancy Agreement sets out:

*"This tenancy agreement will end on the 30th day of June 2022. Unless the Landlord and Tenant agree to another fixed term, the tenancy will automatically continue as a month-to-month tenancy under the same terms as the original agreement. This type of tenancy continues until one party serves notice or they both agree to end the tenancy."*

The tenancy converted to a month-to-month tenancy on July 1, 2022. One of the tenants, [redacted], gave notice on January 30, 2023, that he would be vacating the rental unit prior to March 1, 2023. On February 28<sup>th</sup>, 2023, [redacted] and [redacted] met with a representative of the Landlord for a move out inspection and [redacted] moved out. The security deposit was not refunded to [redacted] as [redacted] had paid the full amount of the security deposit on her own.

In summary, the tenancy agreement was a month-to-month tenancy. One of the tenants on the Residential Tenancy Agreement provided notice to vacate and vacated the residential unit on February 28, 2023. Therefore, the tenancy agreement was at an end on February 28<sup>th</sup>, 2023. There is no right of assignment in the month-to-month tenancy agreement because the tenancy agreement ended when one off the Tenants served notice to vacate.

After receiving the notice to vacate, on January 31<sup>st</sup>, 2023, the Landlord advised the remaining tenant, [redacted], that a new tenancy agreement would be required to remain in the rental unit and to bring another tenant into rental unit. The Landlord worked with [redacted] to approve of a new tenant subject to a new tenancy agreement being entered into. [redacted]

made a payment for rent for the month of March, which payment was based on the expired month-to-month tenancy rent not the new rent as required by the Landlord under the new tenancy agreement. The Landlord confirmed with [redacted] that our acceptance of payment for the old rent was accepted for use and occupancy only and that it did not cancel the Landlord's requirement for a new tenancy agreement.

On March 1, 2023, [redacted] advised that she would not be signing the new tenancy agreement and that she was assigning the new proposed tenant under the expired month-to-month tenancy. The Landlord has not accepted this.

[Reproduced as written except for anonymizing personal information to protect privacy]

## Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The burden of proof is on the party making the claim, in this case, the tenant.



The evidence shows that AR and SQ were co-tenants under a written tenancy agreement beginning on July 1, 2020, which converted to month-to-month tenancy beginning July 1, 2022, at the end of the fixed-term in the second written tenancy agreement.

Also undisputed is that SQ provided written notice to end their tenancy in January 2023, to move out on February 28, 2023 and they moved out on February 28, 2023.

The Act defines ways in which a tenancy ends, and applicable to this application is when a tenant vacates the rental unit or when a tenant ends a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable.

*Residential Tenancy Policy Guideline*, “13. Rights and Responsibilities of Co-tenants” (Guideline 13) sets out the definition of a co-tenant:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

In this case, a co-tenant, SQ, provided notice to the landlord to end the tenancy on February 28, 2023. Guideline 13 sets out the consequences when a co-tenant gives notice:

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.

Further, Guideline 13 provides:

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

When considering the Act and Policy Guideline, I find the tenancy ended on February 28, 2023 for both tenants, by SQ's written notice and subsequent vacating the rental unit.

For this reason, I find that AR has been overholding in the rental unit and find insufficient evidence that the landlord has reinstated the tenancy. The consistent evidence is that the landlord, while approving NM as a tenant, that the approval was with the requirement that AR and NM sign a new tenancy agreement.

Under Policy Guideline, 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. The tenant here intended on staying in the rental unit, not assigning the tenancy agreement solely to anyone.

I do not find the landlord withheld consent to assign the tenancy agreement for several reasons. I have found that the tenancy ended on February 28, 2023 and additionally, I find the tenant did not request to assign their rights under a tenancy agreement to a third party. I find rather the tenant requested to change the terms of the original tenancy agreement, by adding another tenant while retaining other terms of the written tenancy agreement.

For these reasons, I find the landlord was within their legal rights to decline to add NM to the tenancy agreement under the existing tenancy agreement.

As a result, I dismiss the tenant's application due to insufficient evidence, including the request for recovery of the filing fee without leave to reapply.

### Conclusion

The tenant's application is dismissed, 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 05, 2023

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Residential Tenancy Branch