



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding HAVEN MANAGEMENT CO. LTD. (DBA HAVEN PROPERTIES) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 30, 2022, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on November 24, 2022 (the "Notice") as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 9:30 a.m. on April 11, 2023. Both parties called into the hearing. The Tenant, M.A. called in, as did his aunt, M.F., and his roommates, N.K. and V.N. The Landlord's property manager, L.T. called in as did the property owner, I.T. and her legal counsel, M.G.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter—Parties' Names

A review of the tenancy agreement confirmed that M.A. is the Tenant, not M.F., who was named on the Notice. As well, the Landlord is a corporation, not the property manager L.T.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) (RTA) 57(3)(c) (MHPTA) which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenant named four occupants as Tenants, as well as the property manager, L.T. as Landlord. I therefore Amend the Tenant's Application to correctly name the Tenant as M.A. only and to name the corporate Landlord.

### Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on April 11, 2023. This Decision was rendered on May 25, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for

dispute resolution and is the Applicant, the Landlord presented their evidence first. In this case the Property Manager, L.T., testified on behalf of the Landlord.

A copy of the tenancy agreement was provided in evidence and which provided that this tenancy began February 1, 2019. The rental unit is a three bedroom home. L.T. stated that she was not working for the Landlord when the tenancy agreement was signed. She confirmed that she started managing the property in October of 2021. L.T. confirmed that at the time she began managing the property she was not aware of who was living in the property but estimated there were 4-6 people living in the property at the time.

L.T. stated that the only remaining tenant on the tenancy agreement is M.A. as the two other original tenants had passed away. She further confirmed that the Tenant's aunt, M.F., was paying the rent on behalf of the tenants and met her at the property.

L.T. stated that she prepared, signed and dated the Notice on November 24, 2022. The reasons cited on the Notice were that the Tenant had assigned or sublet the tenancy without the Landlord's consent.

L.T. stated that she tried to get in touch with the Tenant, M.A., in mid February 2022 to schedule an inspection of the house. She stated that she finally got a hold of the Tenant's aunt, M.F., who stated that the Tenant had moved abroad. She met with M.F. on March 11, 2022 and did an inspection.

L.T. stated that she didn't issue a notice at the time as she was trying to figure out who was there. She sent emails to M.F. asking her to have all the occupants fill out applications for tenancy. L.T. stated that it took M.F. a very long time to get back to her. Eventually M.F. brought in applications but they were all in M.F.'s handwriting. L.T. stated that she needed the occupants to come in, identify themselves, and fill out the applications.

M.F. then stated that she did not take any further steps as she was having knee surgery. In terms of why she did not issue a notice to end tenancy after finding out that M.A. had moved out, she stated that she was waiting to hear from the owner.

L.T. confirmed that she continued to receive rent from M.F. in the amount of \$2,130.00. She confirmed that she did not issue receipts for use and occupancy in March of 2022 or any month following until she issued the eviction notice.

In response to the Landlord's submissions, an occupant of the rental property, V.N., testified as follows.

- She has lived at the rental property since January 1, 2020.
- When she first moved into the residence, she was under the impression that M.F. was the Landlord.
- M.F. filled out an "Intent to Rent" through the ministry and the rent goes directly to M.F.
- M.A. lives at the rental property and has lived there since she moved in.
- She has roommates, D.B., S.W., and N.K.
- There are 3 bedrooms. V.N. shares a bedroom with D.B. N.K. and S.W. share a bedroom.
- M.F. does not live there.
- They share the cost of the utilities.

M.F. also testified as follows:

- She is the Tenant, M.A.'s aunt.
- She used to live at the rental property in 2018.
- In 2019 she moved out at which time her nephew M.A. moved in.
- In 2019 when M.A. moved in, the Landlord's agent, A.G., met with M.F. and changed the contract to have her nephew living there and his other roommates, V.N. and D.B.
- V.N. and D.B. died of Covid in 2020-2021.
- At the end of 2021, or the beginning of 2022, N.K. and S.W. moved in.
- In March of 2022 the Tenant, M.A. was "overseas" but did not move out.
- They provide shelter for others, however, they are not operating a housing business.
- She and M.A. operate a janitorial business.

In cross examination M.F. stated that her nephew lives in the property and she collects the rent from others. She stated that A.G., the previous property manager, stated that he wanted the rent to be paid regularly and on time. She accepted the responsibility to ensure the rent was paid regularly. In terms of why M.F. does this, and not the Tenant, M.A., M.F. stated that she is "older" and a mother figure to M.A.

M.F. denied the allegation that she was operating a shelter.

M.F. stated that when L.T. came to see her M.F. had each of the individuals filled out an application. L.T. stated that she could not read their handwriting at which time M.F. filled them all out. M.F. also offered to have each individual pay the rent directly to the Landlord however she says the Property Manager wanted rent paid regularly so she continued to pay the Landlord directly. She stated that all the occupants are good people and they all pay their rent each month.

In reply to the Tenant's response, L.T. stated that she does not have any evidence that M.A. moved out, only that she was informed that he was "overseas" in the spring of 2022.

### Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. In this case the Landlord seeks to end the tenancy for Cause, pursuant to section 47(i) alleging the Tenant has assigned or sublet the tenancy agreement without the Landlord's consent.

The Tenant named on the Notice is M.F. The evidence before me confirms that she was a tenant of the rental property at one time, but moved in 2019. In 2019 her nephew, M.A., moved into the rental property. The evidence confirms that a new tenancy agreement was written up when M.A. moved in and which included two other tenants, V.N. and D.B., who unfortunately died of Covid-19 in 2020 or 2021.

The Property Manager, L.T., began managing the property at the time M.A., V.N. and D.B. were living there.

The Landlord alleges that M.A. moved from the rental property in the spring of 2022. This is based on a conversation the Property Manager had with M.F. M.F. disputes this version of events and says she told the Property Manager M.A. was abroad, not that he had moved out. The Landlord did not provide any further evidence which would support their allegation that M.A. moved from the residence.

A current occupant, V.N., also provided affirmed testimony. She stated that M.A. has lived in the rental property since she moved in.

The Landlord alleges that M.F. is operating a housing business/shelter from the rental property. M.F. confirmed she collects the rent from the tenants and occupants and pays the rent directly to the Landlord. She denies operating a shelter. The evidence confirms that until issuing the Notice, the Landlord accepted rent from M.F. and did not issue receipts for use and occupancy only.

As noted earlier in this my Decision the Landlord bears the burden of proving the reasons for ending the tenancy. I find the Landlord has failed to meet this burden, and has failed to prove the stated reasons for ending the tenancy, namely that the Tenant has *sublet* or *assigned* his tenancy.

*Residential Tenancy Branch Policy Guideline 19—Assignment and Sublet* provides that

“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.”

In terms of “sublet” *Policy Guideline 19* provides the following guidance:

“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.”

In both an assignment or sublet, the original tenant vacates the rental unit. Based on the evidence before me, I find that the Tenant continues to occupy the rental unit and has taken in roommates or other occupants, not assigned or sublet his tenancy as contemplated by the *Act*.

*Guideline 19* provides the following additional guidance with respect to roommates and occupants.

### **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.

The Landlords allege the Tenant is operating a shelter. I find the Landlord has submitted insufficient evidence to support such a finding. More importantly, while a landlord may issue a Notice to End Tenancy for Cause in the event a tenant operates a business from the rental unit, alleging this is a breach of a material term of the tenancy agreement, disturbing others and putting the landlord's property at risk, the Notice must specifically cite such reasons.

In this case the only reason cited in the Notice was the Landlord's allegation the Tenant sublet or assigned their tenancy. As I have found the Landlord failed to prove this reason, **I hereby cancel the Notice.**

### Conclusion

The Tenant's Application for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, the Tenant is entitled to recover the \$100.00 filing fee and may withhold this sum from his next month's rent as repayment of same.

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: May 25, 2023

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Residential Tenancy Branch