



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, AS, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “*Act*”), to cancel two One-Month Notice to End Tenancy for Cause, dated February 22, 2023, and February 24, 2023, for permission to assign or sublet the tenancy, and to recover the filing for this application. The matter was set for a conference call.

The Landlord attended the conference call hearing; however, the Tenant did not. As the Tenant is the applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in her testimony and was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

### Issues to be Decided

- Should the Notices to End Tenancy be cancelled?
- If not, is the Landlord entitled to an Order of Possession?

## Background and Evidence

The Landlord testified that the tenancy began on February 14, 2018, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. The tenancy agreement recorded that rent in the amount of \$3,000.00 is to be paid by the first day of each month. At the outset of the tenancy, the Tenant paid the Landlord a \$1,500.00 security deposit. Both the Landlord and the Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that served two Notices (the "Notices") to the Tenant one dated February 22, 2023, and the second dated February 24, 2023, by email sent February 24, 2023, and by Canada Post Registered mail sent on February 25, 2023. The reason checked off by the Landlord within the Notices were the same and are as follows:

- *Tenant has assigned or sublet the rental unit/site/property/park without the Landlord's written consent*

The February 22, 2023, Notice states the Tenant must move out of the rental unit by April 30, 2023, and the February 24, 2023, Notice states the Tenant must move out of the rental unit by March 31, 2023. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. Both the Landlord and the Tenant submitted two copies of the Notices to end tenancy into documentary evidence.

The Landlord testified that the Tenant has never lived in the rental unit, and the Tenant has been subletting the rental unit since the start of the Tenancy.

The Landlord was asked why they had waited for over five years before they took legal action to end the tenancy for subletting. The Landlord testified that they had spoken to the tenant and asked them to stop subletting and that their previous property manager was told to put a stop to the subletting but that due to medical concerns during the property manager's pregnancy, no action was taken. The Landlord submitted that the government restriction on ending tenancy during the COVID pandemic further delayed their ability to end the Tenancy.

The Landlord confirmed that they knew the Tenant had been subletting the rental unit since the tenancy started in February 2018.

The Landlord requested an Order of Possession to enforce their Notice.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I called into the hearing, and the line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenants did not attend the hearing by 10:11 a.m., I find that the Tenant's Application for Dispute Resolution has been abandoned.

During these proceedings, the Landlord requested an order of possession to enforce their Notices to end tenancy.

I accept the undisputed testimony of the Landlord that the Tenant has been subletting the rental unit without the written consent of the Landlord, since February 2018.

However, due to the length of time, five years, between when the Landlord knew that the Tenant was subletting to when these notices were issued to the Tenant, I find that the legal principle of estoppel now applies to this Tenancy. Estoppel is a legal doctrine which holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly.

In this case, I find that the Landlord established a pattern of not enforcing the requirement for written consent to sublet and that the Tenant relied on this pattern for

five years. Consequently, I find the Landlord can not now enforce this requirement as a reason to end this tenancy.

Therefore, I find that the Notices dated February 22, 2023, and February 24, 2023, issued by the landlord, are of no force or effect and decline to issue the Landlord their requested order of possession to enforce these Notices.

### Conclusion

I dismiss the Tenants' Application for Dispute Resolution.

I decline to award the Landlord an order of possession, as they have failed to prove the reason for their notices.

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: June 15, 2023

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Residential Tenancy Branch