



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## DECISION

Dispute Codes AS, OLC, FFT / CNC, MNDCT, DRI, RR, RP, LRE, AS, OLC, FFT

### Introduction

The hearing was convened following two Applications for Dispute Resolution (Applications) from the Tenant under the *Residential Tenancy Act* (the Act), which were joined to be heard simultaneously.

In their first Application, filed on November 27, 2024, the Tenant seeks:

- An order for the landlord to allow an assignment or sublet when permission was unreasonably denied under to section 65 of the Act;
- An order for the Landlord to comply with the Act, the *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 62 of the Act; and
- To recover the filing fee for the Application from the Landlord under section 72 of the Act.

In their second Application, filed on December 4, 2024, the Tenant seeks:

- An order for cancellation of a One Month Notice to End Tenancy for Cause (the Notice) under section 47 of the Act;
- A monetary order for compensation for damage or loss under the Act, Regulation, or tenancy agreement under section 67 of the Act;
- To dispute a rent increase under section 43 of the Act;
- An order to reduce the rent for repairs, services, or facilities agreed upon but not provided, under section 65 of the Act;
- An order requiring the Landlord to carry out repairs to the rental unit under section 32 of the Act;

- An order to suspend or set conditions on the Landlord's right of entry to the rental unit under section 70 of the Act;
- A further order for the landlord to allow an assignment or sublet when permission was unreasonably denied under to section 65 of the Act;
- A further order for the Landlord to comply with the Act, Regulation, or tenancy agreement under section 62 of the Act; and
- To recover the filing fee for the Application from the Landlord under section 72 of the Act.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the other's evidence and the Landlord's Agent acknowledged receipt of the Notice of Dispute Resolution Proceeding Package (the Materials) for both Applications.

The Landlord's Agent stated the package initially provided by the Tenant did not contain the Materials, and only the Tenant's evidence, so a courtesy copy of the Materials was obtained from the Residential Tenancy Branch. However, the Landlord's Agent confirmed there was sufficient time to respond to the Applications and no substantive issues with service or instances of possible prejudice caused to the Landlord were raised.

Given the above, I find the evidence of both parties was served in accordance with section 88 of the Act. I also find the Landlord was sufficiently served the Materials in accordance with section 71(2)(c) of the Act.

#### Preliminary Issues – Severing and Withdrawal of Claims

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an application must be related to each other. Rule 6.2 of the *Rules of Procedure* states that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised in their Applications by the Tenant, I determined that the primary issue is their request to cancel the Notice, since the outcome of this matter could result in an end to this tenancy. I found the other issues were not sufficiently related, apart from the Tenant's request to assign or sublet, given the Notice was issued

following allegations of subletting without the Landlord's permission. However, the Tenant indicated during the hearing they wished to withdraw their request to assign or sublet.

Based on the above, I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the dispute of the Notice and the Tenant's request to sublet. The latter claim was withdrawn with the consent of both parties. Leave to reapply is not an extension of any applicable time limit.

#### Issues to be Decided

- Should the Notice be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for their Application from the Landlord?

#### Background and Evidence

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 agreed on the following regarding the tenancy:

- The tenancy started on August 1, 2016 for a fixed term ending July 31, 2017 and has continued on a month-to-month basis since.
- Rent is currently \$2,011.00 per month, due on the first day of the month, plus a further \$160.00 per month due for parking fees.
- A security deposit of \$850.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenant still occupies the rental unit, a studio apartment suite in Vancouver.

A copy of the Notice was entered into evidence. The Notice is on the approved form, is signed and dated November 28, 2024 and provides an effective date of December 31, 2024. The reason for ending the tenancy, per the Notice is:

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

The Landlord's evidence is as follows. The Tenant contacted the Landlord at the beginning of November 2024 seeking permission to sublet the rental unit during an upcoming period where they would be outside of Canada for six months. The Tenant's request was denied, and the Tenant was advised that if there was any subletting without the Landlord's permission, a Notice to End Tenancy would be issued. I was referred to an email from the Tenant dated November 8 which was provided as evidence by the Landlord.

The Tenant had previously requested an order from the Residential Tenancy Branch to sublet the rental unit, which has been rented on a periodic basis since August 2017. A copy of a decision of an arbitrator dated November 20, 2018, where the Tenant's request to sublet was dismissed without leave to reapply was provided as evidence by the Landlord.

The Landlord's Agent acknowledged there had been a one-time exception to sublet given to the Tenant on October 4, 2017, despite the tenancy being on a periodic basis at that time. A record of the email correspondence where the exception was given was provided by the Landlord as evidence.

The Tenant again requested permission from the Landlord to sublet on November 27, 2024. The request was again denied and warnings about a potential Notice to End Tenancy were reiterated by the Landlord.

On November 28, 2024, the building manager of the residential property found the rental unit listed online on a website called Rent It Furnished. A record of the listing was provided as evidence by the Landlord, which appears to show the Tenant seeking a "cat-sitter/sub renter" for \$2,250.00 per month.

Per the Landlord's Agent, MK, a friend of the Tenant's appeared to have moved into the rental unit a few months ago, though the precise date was not known. There were discussions between the Tenant and the Landlord about adding MK to the tenancy agreement, though this never came to fruition, however, the Landlord has a record of MK's personal identity on file in accordance with guest policy.

It is unknown if MK still occupies the rental unit, though it is the Landlord's belief they or someone else still do, and are most probably paying rent to the Tenant. Given the Tenant was told they could not sublet and still advertised the rental unit online, it was argued by the Landlord's Agent the Tenant was not credible or trustworthy on this issue.

There have been no inspections of the rental unit since May 2024 and there was no written evidence to support the notion MK, or any other parties had any presence at the rental unit since the Tenant temporarily left Canada. Based on the Tenant's email correspondence, it is the Landlord's position the Tenant has sublet the rental unit in the past and is doing so currently, so an end to the tenancy and an Order of Possession is sought.

The Tenant's response was as follows. They have a longstanding connection with MK, who stayed at the rental unit with them from May 30, 2024 until mid-November, when MK left to live in Government-provided accommodation in Surrey. MK has refugee status in Canada and the Tenant indicated they were supporting them financially through their immigration process. The Tenant testified they left Canada on December 15 and they remain outside of the country.

The Tenant's position was they have never sublet the rental unit, apart from when permission was granted by the Landlord in 2017. The Tenant testified friends and neighbours had previously looked after their cat when they were away for long periods, and no compensation was received for this.

Though the Tenant acknowledged their email of November 8, 2024 referred to friends and acquaintances taking on a "cat-sitter sub renter" role, they took the position this was poor wording on their part and "guests" should have been used instead.

Per the Tenant, they know subletting is not permitted under their tenancy agreement, though wanted to ask if this was possible and took a "proactive" approach in seeking possible suitable parties to sublet through an agency, Rent It Furnished, who would vet applicants in the event the Landlord accepted their request.

The Tenant testified MK still visits the rental unit to look after their cat, and to their knowledge, no other people besides MK have attended the rental unit. Per the Tenant, they pay MK for helping with their cat, and no rent or other compensation is being paid to them.

## Analysis

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 47 of the Act states that a landlord may end a tenancy for cause by issuing a Notice to End Tenancy. Section 47(1) of the Act provides the circumstances under which a landlord may issue a Notice to End Tenancy for Cause.

The Landlord seeks an Order of Possession under section 47(1)(i) of the Act which sets out that a landlord may end a tenancy by giving notice 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 of the Act.

Under a sublease agreement, a tenant vacates the rental unit and enters into a separate agreement with the sub-tenant. The original agreement between the tenant and the landlord remains in place. Roommate agreements where the tenant remains occupying the rental unit and another party moves in and shares the living space are not considered sublease agreements under the Act.

As noted above, a tenant must not sublet a rental unit without the landlord's written consent. If there is more than six months left on a fixed-term tenancy, a landlord must not unreasonably withhold consent to sublet the rental unit.

Based on the evidence before me I find the tenancy has been on a period, month-to-month basis since 2017 and the parties have not renewed the tenancy for any further fixed terms. The Landlord has refused all of the Tenant's requests to sublet the rental unit, save for one occasion in 2017. A previous request made by the Tenant to the Residential Tenancy Branch for authorization to sublet in 2018 was dismissed without leave to reapply.

The Landlord alleges the Tenant has sublet the rental unit in the past without written consent and continues to do so. For reasons outlined below, I find the Landlord has failed to establish on a balance of probabilities that this is the case.

The Landlord takes the position MK, or another person currently occupies the rental unit having sublet it from the Tenant. The undisputed evidence was that MK occupied the rental unit with the Tenant recently, though the Landlord's evidence was not clear on the timeline of this. The Tenant's testimony was that MK resided with them from May 30 to mid-November, 2024.

I find the Tenant's evidence on the issue of MK's presence at the rental unit to be clearer, detailed and ultimately more compelling than the Landlord's. From considering the evidence before me, I accept that MK lived at the rental unit with the Tenant from May 30 to mid-November 2024. The Landlord did not appear to take issue with MK occupancy of the rental unit during this period.

It was also not in dispute that there had been discussions of MK being added to the tenancy agreement, but this process was not completed, though a record of their identity was kept on file in accordance with the Landlord's guest policy. From this I find the Landlord can readily and easily identify MK if required.

It was also undisputed the Tenant advertised for a subtenant in November 2024. The Tenant takes the position this was a proactive step in the hope their request to sublet would be approved, and when the requests were denied, nothing came of this.

From the above findings, I find insufficient evidence to indicate the Tenant purported to sublet to MK when the Tenant left the country in December 2024 for a six-month period. Given I find the evidence indicates MK was living with the Tenant from May 2024, there would be no logical reason for the Tenant to advertise online for MK as a subtenant in November. Had the Tenant wished to sublease to MK, since the two have apparently been close for a significant amount of time, there would clearly be no requirement to advertise online.

Further, had the Tenant purported to sublease to MK after December 2024, since the Landlord bears the onus to establish their reasons for issuing the Notice, I would expect the Landlord would be able to provide evidence supporting this notion or which spoke to MK's presence at the rental unit or the residential property. I find the Landlord has failed to do this and realise on speculation and assumption MK occupies the rental unit and pays rent to the Tenant.

There is also the possibility the Tenant found someone else other than MK to sublet the rental unit, though based on the evidence I do not find this was the case. Had this

happened, I would expect the Landlord to have provided evidence to support this. Again, beyond suspicion and speculation, I find the Landlord failed to put forward anything to support their allegations of subletting as there was no compelling evidence to support occupancy of the rental unit by another in the Tenant's temporary absence or indeed any presence of any kind at the rental unit or the residential property.

I am also not prepared to uphold the Notice and end this tenancy on the basis of the Tenant purporting to sublet in previous years. Beyond the email of November 8, 2024 where the Tenant is seen to refer to friends and acquaintances previously looking after their cat as sitter and sub renters I found there was indication the Tenant may have sublet and I found the Tenant's explanation for the phrasing in the email to be plausible.

I am mindful the provisions of the Act just require a landlord to establish a tenant has purported to sublet. A landlord is not required to prove on a balance of probabilities a tenant has, as a fact, sublet since in the absence of a written sublease agreement or evidence of money exchanging hands etc. this would be an uphill battle. The Landlord is only required to establish the appearance of subletting, which I find they have failed to do in this case.

Given the above, I grant the Tenant's Application for cancellation of the Notice. I order the One Month Notice to End Tenancy for Cause dated November 28, 2024 cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in their Application to cancel the Notice, I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the return of the filing fee per section 72(2)(a) of the Act.

I am not inclined to allow the recovery of both filing fees since the Tenant had to option to amend their existing Application to dispute the Notice, rather than file a new Application. There was ample time to amend the first Application under rule 4.1 of the *Rules of Procedure*. I find if the Tenant were able to recover both fees, this would be prejudicial to the Landlord.

Conclusion

The Tenant's Application for cancellation of the Notice is granted.

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: February 07, 2025

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Residential Tenancy Branch