



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord's application: OPR, MNR, FF

Tenants' Application: CNR, OLC, FF

### Introduction

This was a hearing with respect to applications by the party named as landlord and the named tenants. The landlord's claim was brought against the tenant, D. M-L only, but the other tenants were named as applicants in the tenants' application for dispute resolution. The hearing was conducted by conference call. The landlord attended with his father, who is an occupant of the rental property. The respondent D.M-L called in and participated in the hearing. The other named respondents attended the conference call hearing. They were each served with Notices to End Tenancy for unpaid rent by the applicant landlord. The landlord said at the hearing that he had withdrawn all Notices to End Tenancy, save for the one given to D.M-L because they were defective and unenforceable. Ms. R.K.G. the owner of the rental property attended as a witness for the respondents.

### Issue(s) to be Decided

Should the November 2, 2015 Notice to End Tenancy for unpaid rent be cancelled?

Should the landlord be granted an order for possession?

Is the landlord entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is a house in Vancouver. According to the landlord applicant, he became a leaseholder of the rental property in April, 2014. He said that his father moved into the house in 2015 and the other occupants of the house were evicted in April, 2015. The tenant testified that he is authorized by the owner of the rental property

to act as landlord. He said that he lives in the rental property and has sublet rooms in the rental property to different persons, including the respondent, D. M-L. The landlord does not have a written tenancy agreement with the owner of the rental property. He said that the owner has verbally authorized him to act as the landlord of the rental property. He produced photocopies of receipts given to him by the owner to acknowledge monthly cash payments in the amount of \$2,950.00 each. The landlord does not have a written tenancy agreement with D.M-L. The landlord was asked to state the terms of his tenancy agreement with D. M-L. He said that he agreed to rent the basement of the house to D.M-L for \$1,400.00 per month. He testified that he was pressured by D. M-L to change the terms of the agreement. He said it was agreed that D.M-L would rent the basement and three other acquaintances would rent three rooms. The landlord was unable to clearly state the terms of the alleged tenancy agreement, but he referred to a document prepared by D.M-L said to be an agreement. The landlord said that he signed the document to ensure harmony in the house, but then discovered that the agreement did not deal separately with utilities. The document was a typed recitation of what appeared to be the dialogue of a negotiation between the tenant and the landlord that included discussions with respect to sharing produce and tobacco grown in the garden of the rental property.

The landlord served the tenant D. M-L with a 10 day Notice to End Tenancy for unpaid rent dated November 2, 2017. The Notice to End Tenancy stated that the tenant failed to pay rent in the amount of \$1,272.00 due on November 1<sup>st</sup> and \$60.00 for utilities due November 2, 2017. The Notice to End Tenancy required the tenant to move out of the rental unit by November 12, 2015. The Notice to End Tenancy pre-dated the written agreement which was signed by the tenant and the landlord on November 17, 2015.

In the application for dispute resolution filed on November 10, 2015 the landlord claimed that:

(name of tenant) did not pay me his money for rent at (address). Instead he took the money of my other tenants and his and gave it to my landlady in exchange for a receipt in his name. I have been the sole renter of (address) since April 2015.

The landlord submitted an amendment to his application. He sought to reduce the amount claimed for rent to the sum of \$1,214.00 and to add claims for rent for December and January.

The tenant D.M-L (and the other tenants) filed their application for dispute resolution seeking to cancel the Notices to End Tenancy for unpaid rent on November 12, 2015. According to the applicant he received the Notice to End Tenancy on November 8, 2015.

In the tenants' application for dispute resolution, the tenant, D.M-L said that he was approached by the landlord, who he described as a "long-time friend" about filling vacancies in a house that he occupied. The tenant said he had a conversation with the landlord who told him that there were three rooms available for rent in addition to the basement. According to the tenant it was discussed and agreed that the rent for each of the three rooms would be \$600 per month and \$800 for the basement.

The tenant said that after he moved in he learned that there were two additional rooms in the house, one occupied by the landlord's father and another by a man and his girlfriend. The tenant said that he moved into the basement and his three friends occupied the three rooms. The tenant said his friends could not afford to pay \$600.00 each per month, so he agreed they could each pay \$500.00 per month and he would pay \$1,100.00 per month for the basement to make up the difference. The tenant said that soon after he moved in the landlord borrowed \$1,400.00 and agreed to pay it back in cash instalments.

The tenant said that the landlord created new problems after he and his friends moved in. The landlord said he wanted to implement a rent payment system whereby each of the tenants would pay sufficient rent to cover all rent and expenses and he as landlord would not pay rent or utilities, but would be responsible for managing the rental property. The tenants did not share the landlord's vision and discord erupted when the tenants of one of the rooms were evicted. The police and the owner of the rental property were present for the eviction and the tenants took this occasion to complain to the owner about the conduct of the landlord. It was at the insistence of the police, who were troubled by the calls for police intervention from the rental property, that the owner commenced to collect rent directly from the occupants and assumed the role of landlord so as to avoid further police involvement. According to the tenants as stated in their testimony and written statements, in the presence of the police, the owner told the landlord that he was no longer the agent/manager of the house; that he had no authority over the other tenants and henceforth was not to collect rent from the other tenants.

The landlord recently submitted a form letter to each of the tenants by text message. The letter said:

Your continued attempts to try and subvert my authority as your landlord has greatly damaged my good relationship with my landlady (name), and has cost us all a comfortable home. Your rent is due on January 1<sup>st</sup> and is to be paid directly to either myself, (name) or to my agent (name of father) and no one else. This includes your portion of the utilities owing up to and including January 2016. Failure to do so or any further interference with my landlady or continuing to conspire with my other tenants to further harm my relationship with (name of

landlady/owner) or attempts to subvert my tenancy with her will be used as evidence against you as grounds for eviction.

There have been a series of altercations between the occupants and the landlord involving cleaning and re-cycling in the rental unit, the management of various cats belonging to the landlord and other occupants and the use of hot water. The owner and the police have been called to intervene in disputes between the landlord and other occupants.

### Analysis

The named landlord does not have a written tenancy agreement with the owner, nor does he have any written permission from her to sub-let rooms in the rental unit. Based on the testimony of the parties, he appears to have attempted to fill a vacuum created by the lack of direct management by the owner and sought to assume the mantle of landlord with full authority to approve tenants, fix rents and exercise full management authority over the rental property. According to the owner, the landlord was only authorized to act as her agent for the purpose of collecting rent from the other tenants.

There is no doubt that the "landlord" did attempt to act as landlord by seeking out new occupants, supposedly to sub-let rooms in the rental property, but he did so without any written tenancy agreement between himself and the landlord and without approval to sub-let. In his efforts to create tenancies with new occupants he did not produce any written tenancy agreements between himself and individual tenants and the terms of any oral agreements were at best nebulous and appear to have been made with the tenant, D. M-L acting as an intermediary between the landlord and other tenants. After hearing the testimony of the parties and reading their written submissions, I am unable to state the precise terms of any of the supposed agreements. Among the essential but missing terms are the particulars of the rent and utilities to be paid by each tenant.

The matter that is before me at this hearing are cross-applications by the landlord seeking an order for possession against the tenant D.M-L pursuant to a 10 day Notice to End Tenancy for unpaid rent and by the tenant to cancel the Notice to End Tenancy.

I find that the applicant landlord has failed to establish, first that he has the authority to contract with the respondent to form a relationship as his landlord and second, that he has failed to establish what are the essential terms of an alleged tenancy agreement, including the amount of rent payable by the tenant. He served the tenant with a Notice to End Tenancy for unpaid rent. The Notice claimed that \$1,272.00 was due for November rent. The landlord then sought to amend his application to change the rent amount to the sum of \$1,214.00. I heard conflicting evidence as to evolving terms of the tenancy, with rental amounts varying from \$800 to \$1,100 per month. On November

1, 2014 the tenant paid rent directly to the landlord on behalf of himself and other tenants.

The applicant landlord has not shown, on a balance of probabilities that he is the authorized landlord and he has not established the terms of the alleged tenancy with D.M-L. The tenant D.M-L has paid rent to the owner and she has accepted the payments in the capacity of landlord. I find that the Notice to End Tenancy dated November 2, 2015 is not a valid Notice to End Tenancy. I allow the application by the tenant D.M-L and I order that the Notice to End Tenancy dated November 2, 2015 be, and is hereby cancelled. The application of the landlord for a monetary award and for an order for possession is dismissed.

### Conclusion

The landlord's application is dismissed the tenant's application has been allowed. The tenant D.M-L is entitled to recover the \$50.00 filing fee for his application and I grant him a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: February 11, 2016

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Residential Tenancy Branch

