



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding West End Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNC; RP; MNDC; AS; FF

### **Introduction**

This matter was scheduled to be heard by teleconference. This is the Tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; a repair order; compensation for damage or loss under the Act, regulation or tenancy agreement; authorization to assign or sublet the rental unit; and to recover the cost of the filing fee from the Landlord.

Both parties signed into the teleconference and gave affirmed testimony.

Rule 2.3 of the Rules of Procedure provides that claims made on the same Application for Dispute Resolution must be related to each other. In this case, I find that the Tenants' claims for a repair order; compensation for damage or loss under the Act, regulation or tenancy agreement; and authorization to assign or sublet the rental unit are not sufficiently related to be heard on the same Application. The Tenants wished to deal with their application to cancel the Notice to End Tenancy for Cause issued September 30, 2016 (the "Notice"), and therefore the Hearing continued with respect to that portion of their Application and their request to recover the cost of the filing fee only. The remaining portion of the Tenants' Application is dismissed with leave to reapply.

There were no issues identified with respect to service of documents.

The Tenants received the Notice on September 30, 2016, and made their Application on October 4, 2016.

### **Issue(s) to be Decided**

Is the Notice a valid notice to end the tenancy?

## **Background and Evidence**

A considerable amount of documentary/oral evidence and submissions were provided. In this Decision, I have only recorded the relevant portions of the parties' evidence and submissions.

The Notice provides the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The Tenants JM and NV, together with a third tenant ("AC"), and their previous Landlord ("MS") entered into a written tenancy agreement on March 25, 2015. The tenancy agreement is a one year lease. At the end of the term, the tenancy continued on a month-to-month basis.

The rental unit is a three bedroom suite in a heritage-style home, built in 1901-02.

Clause 3 in the addendum to the tenancy agreement provides:

The persons listed here and above on the last page of this agreement shall be the only occupants of the Property, provided however, that the Tenant shall have the right to accommodate a reasonable number of guests. Any guests remaining longer than one month shall be deemed to be "additional occupants". The Tenant agrees to cause the "additional occupants" to vacate the Property in the event that the Landlord does not agree to sign an amendment to the Tenancy agreement for the "additional occupant". The Tenant's failure to remove the "additional occupant" shall be a breach of this Agreement."

In October, 2015, JM's girlfriend "MH" moved into the rental unit. In April, 2016, the Tenants corresponded by e-mail with the previous Landlord's agent AM seeking to add MH as a tenant to the tenancy agreement.

In June, 2016, MS sold the property to the current corporate Landlord, and the Landlord inherited the tenancy. MS's agent "AM" continued on as agent for the Landlord after the rental unit was sold.

In July, 2016, the Tenant NV moved out and another person "CO" moved in.

On August 4, 2016, AM e-mailed the Tenants advising that he is sending an amendment to include MH in the tenancy agreement, asking for MH's full name, and asking if there were any other changes. AM also advised that the new owner asked if the Tenants were interesting in signing another term tenancy and acknowledging that the Tenants were on a month-to-month tenancy.

On or about August 11, 2016, AM drafted an amendment to the tenancy agreement, removing NV from the tenancy agreement and including CO and MH. On September 1, 2016, CO and MH filled out a "rental application" and gave it to AM. The corporate Landlord did not agree to a fourth person living in the rental unit.

The Landlord issued the Notice on September 30, 2016.

After the Notice was served on the Tenants, the Landlord discovered that there were dogs in the rental unit, contrary to the terms of the tenancy agreement.

### **Analysis**

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence, on the balance of probabilities, that the tenancy should end for the reason(s) given on the notice.

The Act defines a "landlord" as:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

[reproduced as written]

In this case, I find that AM was an agent of the previous landlord and also is an agent of the Landlord. Therefore, AM is by definition the Landlord.

1. Tenant has allowed an unreasonable number of occupants in the unit/site.

I find that AM was aware on or before April 30, 2016, that MH had moved into the rental unit. AM did not give the Tenants a warning that this constituted an unreasonable number of occupants in the rental unit. Rather, AM drafted an amendment to the tenancy agreement to include MH as a tenant, signaling acceptance of MH as a tenant. Therefore, I find that this reason to end the tenancy has not been proven.

2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time **after written notice to do so**. [my emphasis added]

The corporate Landlord gave the Tenants the Notice to End Tenancy on September 30, 2016, which is approximately 6 weeks after AM drafted the amendment adding CO and MH to the tenancy agreement and one month after CO and MH filled out a "rental application". The Landlord provided insufficient evidence that it had provided the Tenants with written notice to correct a breach of a material term of the tenancy agreement within a reasonable time. Therefore, I find that this reason to end the tenancy has not been proven.

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

In these circumstances, I find that AM was working with the Tenants to assign NV's interest in the tenancy to CO. Therefore, I find that this reason to end the tenancy has not been proven.

The Landlord did not discover the Tenants' dogs until after the Notice was issued and therefore, this reason is not part of the Notice. The Landlord is at liberty to issue a new notice to end the tenancy if it so desires.

The Tenants' Application is granted. I find that the Tenants are entitled to recover the cost of the filing fee from the Landlord.

**Conclusion**

The Notice to End Tenancy issued September 30, 2016, is cancelled. The Tenancy will continue until it is ended in accordance with the provisions of the Act.

The Tenants may deduct \$100.00 from future rent due to the Landlord, in recovery of the cost of the filing fee.

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: November 29, 2016

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Residential Tenancy Branch