



# Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

## **DECISION**

### **Dispute codes**

CNC, FF

### **Introduction**

This hearing was convened in response to an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated August 08, 2009, with an automatically adjusted effective date of September 30, 2009 [Section 53 – Residential Tenancy Act (the Act)]. The tenant also applies for recovery of the filing fee for this application.

There is no dispute that the reasons stated on the Notice are: Section 47(1)(c) , 47(1)(ii) & (ii) and 47(1)(i).

Both, the tenant and the landlord participated in the hearing and each provided affirmed testimony.

In the hearing the landlord verbally requested an Order of Possession.

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

Was the landlord's Notice to End validly issued?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The tenancy began on March 01, 2009 as a fixed term tenancy, for three (3) years, of a newly constructed residential property. Rent in the amount of \$2200 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord

collected a security deposit from the tenant in the amount of \$1100.

In this type of application, the burden of proof rests with the landlord to provide compelling evidence that the Notice was validly issued for the stated reasons.

The landlord primarily relies on their claim that the tenant has sublet the rental unit to other tenants without the landlord's written consent, and in so doing has allowed an unreasonable number of occupants in the unit and under conditions unacceptable to the landlord. The landlord also claims the tenant is operating, or is near operating a daycare centre in the upper half of the rental unit – complete with signage, equipment and toys. The tenant does not dispute any of the landlord's claims – and that they are in the end stages of being licensed as a daycare and plan to accept up to eight(8) children.

The landlord testified that when they attempted to show the rental unit to prospective purchasers, the landlord discovered three (3) additional occupants in the rental unit did not want anyone to enter their bedrooms and that they were tenants of the applicant, not guests as initially described by the tenant. The tenant does not dispute that they rented three of the bedrooms out to other occupants. The landlord asserts that the additional renters are using their bedrooms as self-contained units, with which the landlord is strongly opposed and is contrary to the tenancy agreement. The landlord further testified that the applicant has never requested written permission to sublet the rental unit; and, that the landlord has never given the tenant written consent to sublet the rental unit.

The tenant testified that prior to entering into a tenancy agreement he received verbal permission from the landlord to sublet the rental unit and operate a daycare on the property – which the landlord strongly denies, as such conditions would place the newly built house at serious risk of damage and excess wear, and is contrary to the owner's insurance for the house.

## Analysis

The landlord issued a Notice to End for Cause for several reasons. Only one valid reason for ending the tenancy is required under Section 47 of the Act.

On the preponderance of all the evidence **I find** the landlord has met the burden of proof in showing he has sufficient cause to end this tenancy on the basis of *tenant has assigned or sublet the rental unit without the landlord's written consent*.

**47(1)(i)** 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 [*assignment and subletting*];

## **Assignment and subletting**

**34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

Accordingly, I dismiss the tenant's application to cancel a notice to end tenancy for cause, and I find that the landlord is entitled to an Order of Possession.

## Conclusion

**I hereby order** the tenancy will end. The tenant's application is dismissed.

I grant an Order of Possession to the landlord effective not later than **1:00 p.m., Saturday, October 31, 2009**.

Ending a tenancy is a serious matter. The landlord has full discretion as to whether to issue the Order, and can, alternatively, choose to resolve this matter versus ending the tenancy. However, if the landlord determines to end the tenancy,

this Order must be served on the tenant. Should the tenant then fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Dated September 11, 2009.