



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, CNR, AS, RR, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for cause and for unpaid rent, to allow the tenant to assign sublet unit, to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by personal delivery October 6, 2010. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Landlord entitled to End the Tenancy?
2. Is the Tenant entitled to assign or sublet the unit?
3. Is the Tenant entitled to a rent reduction?

### Background and Evidence

This tenancy started in February 1, 2010 as a month to month tenancy. The Tenant said she had rented another unit in the complex from the previous owner since November 20, 2008. Rent is \$800.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$400.00 on February 1, 2010 and a pet deposit of \$225.00 on November 20, 2008.

The Landlords said they issued a 1 Month Notice to End Tenancy for Cause dated September 25, 2010 as the Tenant has an unauthorized occupant living in the unit. The Landlords said the unauthorized occupant J.C. has been living in the unit since August 26, 2010 and they were not advised that he had moved in to the unit. The Landlords continued to say that Mr. J. C. was a previous tenant and employee of theirs. The Landlords said he does not work for them anymore and he was evicted from their rental complex in August, 2010. They said they do not want him living in the Tenant's unit.

The Landlords also said that they issued a 10 Day Notice to End Tenancy for Unpaid Rent date October 5, 2010 and the Tenant paid the rent on October 9, 2010. The Landlords said the November rent is unpaid as of the hearing date November 3, 2010.

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The Landlords said they are willing to continue the tenancy with the Tenant, but the unauthorized occupant J. C. must leave the unit. The Landlords want possession of the rental unit if the unauthorized occupant J.C. does not move out.

The Tenant said that she did not tell the Landlords about the unauthorized occupant J.C. and that was her mistake. She said that J.C. was her common law partner and they are trying to get back together so he moved in to the unit. She said he is also helping take care of her 3 year old son when she is at work.

The Tenant continued to say that she has always paid her rent and that she will pay the November rent tomorrow. She had not paid the November rent as she wanted to see what happened at today's hearing in case the rent amount was changed. The Tenant said that she would pay the full \$800.00 rent on November 4, 2010.

The Tenant continued to say that there are many repairs, safety and health issues at the unit and in the rental complex. She continued to say that she had the Township of Esquimalt inspect the unit on October 7, 2010 and the inspection was not approved. The deficiencies were; damage to bathroom walls and floor, bathroom sink taps are loose, kitchen counter needs replacing, living room floor is damaged and the deck is rotten. The Tenant said she has told the Landlords about these repairs before and gave the Landlords the inspection report, but nothing has been done about it.

The Tenant had her witness J.C. give his testimony. The Witness said that the Landlords didn't like him and that was why the trouble had started. He said that he asked the Landlords if he could be on the tenancy agreement at the end of September and the Landlords said no. The witness continued to say he is the Tenant's son's father and he should be allowed to live there. He also said that if the Tenant is going to be evicted because of him he would move out. The Witness said he would move out November 30, 2010. The Landlords said they do not want the Witness in the unit at all and definitely not to November 30, 2010.

## Analysis

Section 47 (1) says a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (h) the tenant (i) has failed to comply with a material term of the tenancy agreement, and (ii) has not corrected the situation

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within a reasonable time after the landlord gives written notice to do so;

(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*];

As the Tenant and the Witness both testified, the Witness J.C. was living in the unit without the Landlords written consent. The Tenant has failed to comply with a material term of the tenancy agreement (no unauthorized occupants in the unit) and the unauthorized occupant J.C. is deemed to be subletting in the rental unit. As a result I find for the Landlords and dismiss the Tenant's application to cancel the 1Month Notice to End Tenancy for Cause. Consequently, I find pursuant to s. 55(1)(a) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

As the Tenant has not been successful in cancelling the Notice to End Tenancy, I dismiss the other claims on her application; to allow assignment or sublet of the rental unit, reduced rent for repairs of the unit and to recover the filing fee.

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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*.

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