



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an application by the tenant to cancel a 1 month notice to end tenancy for cause and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

On November 26, 2010 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause: tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord testified that the tenants were employees of the Pacific Sands apartment complex and were provided a suite at no charge as part of their employment package, this unit has a market value of \$1250.00 rent. In February 2010 the female tenant went on maternity leave and the landlord continued to provide unit 504 to the tenants to reside in at no charge per the female tenants employment agreement. The male tenant has not been employed by the respondent since June, 2010 when his employment was terminated. Upon her return from maternity leave November 15, 2010, the landlord advised the female tenant that due to a restructure, employees were no longer provided a suite at no charge and that the female tenants pay was being adjusted accordingly. The female tenant's employment was subsequently terminated by the employer December 8, 2010 after the landlord discovered that the tenant was working for a new property management company and not residing on site.

Evidence submitted by the landlord reflects that the female tenant while still employed on a full-time basis by the landlord had, as of November 8, 2010, started working 3 days per week as a relief caretaker for a new employer and was residing full time with her husband at the new employer's property. The husband holds the position of full-time residential caretaker for his new employer and is required to reside on site.

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The landlord has provided evidence that the tenant's have a signed lease agreement for a rental unit in Coquitlam BC and confirmed with the property management company of that unit that the tenant's continue to rent said unit. The landlord has submitted evidence verifying that the tenant's new employer will be providing the tenants with housing effective January 1, 2011.

The landlord has verified that the mother of the female tenant has been and continues to reside in suite 504 and has her own key to the building. On November 19 2010, the landlord advised the tenant that they were aware that the tenant's mother was residing in the unit, that the suite was for occupancy by the tenants and their daughter only and that the unit was to not be sublet.

The landlord's agent observed the tenants arriving at 10:00AM this day to unit 504 to take part in the conference call hearing.

As the landlord does not and is not allowing the tenants to sublet the suite that they had provided at no cost as part of the tenant's employment, the landlord is requesting an order of possession effective December 31, 2010 at 1:00PM, based on the 1 month notice to end tenancy for cause.

The tenant testified at the start of the hearing that she had not received the landlord's evidence package. The landlord's agent testified that the evidence had been delivered in person, to the address on the application, and that the tenant's mother had taken receipt of the evidence. Based on this testimony I am satisfied that the landlord's evidence was properly served on the tenants.

The tenants maintain that they both reside at the rental unit with their daughter and that the tenant's mother is only visiting. The tenants have submitted copies of a phone bill in the mother's name at her Winnipeg MB address and a copy of their phone bill with the dispute address.

The tenant stated that the landlord's agent did not speak to her about her mother staying in the unit and that she had no idea that it was an issue. The tenant did acknowledge in this hearing that through her position as a property caretaker, she was very familiar with and understood the potential issues associated with guests of tenants staying for extended periods of time.

## Analysis

### Residential Tenancy Policy **Guideline 4. Service Of Documents Generally**

The Legislation provides a number of service methods which may be used where a landlord or tenant is serving documents which are not covered by the sections referred to above. These methods are:

- **by leaving a copy of the document at the person's residence with an adult person who apparently resides with the person to be served**

A person may be considered to apparently reside with someone, if, from what can be seen, observed, or is evident from all of the circumstances known to the person serving the document, the person appears to reside with the person to be served.

Based on the documentary evidence and testimony of the landlord and tenants, I find on a balance of all probabilities that it is not feasible or realistic that the tenants are residing at a property in Vancouver BC while both are employed as caretakers at a property in Coquitlam BC where they are expected to reside on the property as a term of their employment. Therefore I find that the landlord has met the burden of proving that they have grounds for entitlement to an order of possession.

The tenant's application is hereby dismissed without leave to reapply.

## Conclusion

The tenant's application is dismissed without leave to reapply.

I hereby grant the Landlord an **Order of Possession** effective not later than **1:00 PM, December 31, 2010**. This Order must be served on the Tenants and All Occupants and may be filed in the Supreme Court of British Columbia 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: December 22, 2010

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Dispute Resolution Officer