



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on August 17, 2011 for a 7 month fixed term tenancy beginning on September 22, 2011 for the monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid on August 17, 2011.

The tenant also submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on November 23, 2011 with an effective date of December 23, 2011 citing the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk and that the tenant has assigned or sublet the rental unit without the landlord's permission.

The landlord testified that shortly after the tenancy began the tenants allowed a trailer to park on the property and that later they came to understand the tenants had allowed additional occupants move into the rental unit.

The parties acknowledge they did try to work out an acceptable amendment to the tenancy agreement that would address the issue including a verbal agreement by both parties that 3 occupants was a reasonable number for the size of the 1 bedroom rental unit.

While the landlord, does not object to having guests she is concerned that the tenants continue to intend to have multiple long term occupants in the unit. As recently as Tuesday, the landlord testified, the tenant intends to have 2 Swedish males move into the unit for 6 weeks. The tenant stated that was only as way to obtain additional income to cover additional costs.

The landlord testified that on November 5, 2011 the tenants had a birthday party and had used gasoline to build a fire that was too close to the sawmill and forest on the property. Both parties agree this was a single occurrence and has not happened again. The tenant testified that at the hearing was the first time he understood this to be one of the reasons the landlord wanted to end the tenancy.

The landlord also asserts the tenant has assigned or sublet the rental unit to these additional occupants. The tenant submitted definitions of assignment and sublease taken from the Guide for Landlords and Tenants in British Columbia available on the Residential Tenancy Branch website.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more, among other reasons, of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) The tenant or a person permitted on the residential property by the tenant has
  - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - iii. Put the landlord's property at significant risk;
- c) 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;

Section 34 of the *Act* stipulates that unless the landlord consents in writing, a tenant must not assign tenancy agreement or sublet a rental unit. As submitted by the tenant the Guide for Landlords and Tenants defines an assignment as where the original tenant gives up the rental unit and the new tenant and landlord continue under the same terms as the existing tenancy agreement.

The Guide also defines subletting as the tenant renting the unit to someone else. The tenant remains responsible to the landlord for all liabilities related to the tenancy while the sub-tenant lives in the unit. The original tenant becomes the landlord to the sub-tenant and must enter into their own tenancy agreement.

I find the landlord has failed to establish the tenant has either sublet or assigned this tenancy to another tenant and as such, I find the landlord has failed to establish this as a cause to end the tenancy.

The landlord identified the fire incident to be the cause to end the tenancy that the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk

As the landlord provided no written warning to the tenants or provided them with an understanding of this incident prior to the issuance of the notice I find the landlord has failed to provide sufficient warning on the consequences to the tenancy of such activity. Therefore, I find the landlord cannot rely on this incident to end the tenancy.

In relation to the number of occupants, from the testimony the majority of concerns around the issue of occupants occurred over a 3 day period in late November 2011 and that, in fact, the parties still seemed to be working out potential solutions when the landlord issued the Notice. Again, I find the landlord has failed to provide sufficient and written warnings to the tenants as to the consequences to the tenancy should the tenant fail to limit the number of occupants.

For these reason, I find the tenant is entitled to cancel and disregard the 1 Month Notice to End Tenancy for Cause issued by the landlord on November 23, 2011. However, I note the tenants should consider they have been sufficiently warned by the landlord regarding all of the above causes of the potential for the landlord to end the tenancy should any of the events occur again.

Further and by agreement of the parties 3 people is a reasonable number of occupants for the size of the rental unit and any additional occupants will be considered by the landlord as sufficient cause to end the tenancy. The parties also agree that the tenants are allowed to have guests for durations of up to 2 weeks and that anyone staying beyond 2 weeks will be considered an occupant.

### Conclusion

For the reasons noted above, I find the tenancy to remain in full force and effect.

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 15, 2011.

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Residential Tenancy Branch