



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated April 27, 2012, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant/Applicant in this matter is not a party to the tenancy agreement, however she claimed at the beginning of the hearing that she has the authorization of the “tenants” named on the tenancy agreement (namely her mother and son) to bring this application on their behalf.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Tenant entitled to compensation?

### Background and Evidence

This fixed term tenancy started on September 1, 2011 and expires on August 31, 2012. Rent is \$2,000.00 per month payable in advance on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$1,000.00 and a pet deposit of \$1,000.00 at the beginning of the tenancy.

The Parties agree that on April 27, 2012, the Landlords served the tenants with a One Month Notice to End Tenancy for Cause dated April 27, 2012 by posting it to the rental unit door. The grounds alleged on the notice were as follows:

- 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 put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Tenant has assigned or sublet the rental unit without the landlord's written consent.

The Landlord, N.H., said it is a term of the tenancy agreement that only the named tenants are permitted to be permanent occupants of the rental unit and that the tenants had to get the landlord's written consent before allowing any other person to reside in the property. N.H. said from the beginning of the tenancy, the Tenant and her husband moved into the rental property with a large number of furnishings and other belongings that she referred to as "flea market" inventory. N.H. said she never gave the tenants permission to have anyone else reside in the rental property. N.H. said the rental unit is 2,147 square feet in area and claimed that the furnishings and personal belongings of all of the occupants at present would fill a 6,000 square foot building. Consequently, N.H. said she believes the extra people and their possessions is causing additional wear and tear on the property and that the many belongings pose a fire hazard.

The Tenant claimed that when N.H.'s property manager signed the tenancy agreement with the tenants, she was up front with him and let him know that she would be residing in the property intermittently for a week at a time as it was her intention to reside primarily in Alberta where her spouse was employed. The Tenant said it was also her intention that she and her spouse would be living elsewhere during the winter months. The Tenant said the property manager recorded her licence plate on the tenancy agreement and advised her to pay a pet deposit for her pet. However, N.H. claimed the tenants led the property manager to believe that the pet and vehicle belonged to them. In any event, the Tenant said her plans changed and she admitted that she has been a permanent occupant at the rental property since September 2011 in order to "oversee the care" of her mother and son.

The Tenant denied that there has been any property damage or that there is a risk of property damage. The Tenant denied that her possessions were flea market inventory but instead claimed that she is selling some of her furnishings in order to down size. The Tenant said she is seeking compensation of \$2,000.00 for stress and inconvenience because she believes the Landlord has acted unfairly in trying to end the tenancy because her real motive for ending the tenancy is so that she can sell the property.

### Analysis

The addendum to the tenancy agreement contains the following term:

"The Tenant(s) agrees that the said Premises will be occupied by 2 adults, namely, W.M. and J.M. The Tenant(s) covenants that the above persons shall be the only permanent occupants of the Premises during the term of this Tenancy agreement, unless the Landlord agrees in writing to other persons becoming permanent occupants."

Although the Tenant claimed that the Landlords knew at all times that she would be residing in the rental unit, I find that this is not the case. In particular, I find that at the beginning of the tenancy, the Tenant advised the property manager that she would be a short-term guest from time to time and not a permanent occupant. I also find that the above-noted term of the tenancy agreement indicates that this was the Parties' intention at the beginning of the tenancy. I find that the tenants have allowed the Tenant to be a permanent occupant of the rental property without first obtaining the written consent of the Landlord, and in so doing have breached a material term of the tenancy agreement.

I also find that on April 24, 2012, the Landlord, N.H., served the tenants with a letter advising them that they were in breach of a material term of their tenancy agreement and that the Tenant had to vacate the property by April 30, 2012. However, I find that to date the Tenant has not moved out of the rental property and as a result, I find that there are grounds to end the tenancy. Consequently, the Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated April 27, 2012 is dismissed without leave to reapply.

I also find that there is no basis upon which to grant the Tenant's application for compensation. In the Supreme Court of B.C. case of *Whiffin v. Glass & Glass* (July 26, 1996) *Vancouver Registry No. F882525 (BCSC)*, the Court stated that as long as the landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that a landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy is to dispute the notice ending the tenancy. Furthermore, in order to end a tenancy, a Landlord must be able to show on a balance of probabilities that one of the grounds alleged on a Notice to End Tenancy exists. If a Landlord is able to do that, it is irrelevant (when it is for cause) whether a Landlord has an ulterior or secondary motive for ending a tenancy. Consequently, the Tenant's application for compensation is also dismissed without leave to reapply.

### Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause will take effect on May 31, 2012 and the tenancy will end at that time.

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: May 23, 2012.

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