



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNDC, OPC, OPB, OPL, O, FF

### **Introduction**

This hearing was convened to deal with an Application for Dispute Resolution by the landlord for a monetary order for rent owed based on the tenancy agreement, which included a term for additional rent for each additional occupant. The landlord had also applied for an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use.

Both parties were present at the hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

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

Is the landlord entitled to monetary compensation for rental arrears owed?

Is the landlord entitled to an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use ?

### **Preliminary Matter: Agent or Tenant**

The respondent who attended the hearing stated that, although he was named in the landlord's application as a co-tenant, along with the female tenant, he was actually not a tenant living in the subject rental unit, but was appearing at the hearing only to act as an agent on behalf of the tenant. He stated that this was because the tenant was not available to appear and had a language barrier. The person appearing, (hereinafter identified as "*purported agent*") testified that he did have first-hand knowledge of all relevant matters under dispute and could provide testimony in defense of the landlord's application.

The landlord argued that the respondents named were both considered as co-tenants and pointed out that the male respondent, who was in attendance alleging to be merely an agent, was always present in the suite during any inspections by the landlord or any other contact they had with the occupants of the suite.

The landlord testified that this individual had, over the years, made numerous complaints to and about the landlord with respect to tenancy issues concerning the suite and routinely communicated with the landlord in regard to tenancy matters. Copies of some of the purported agent's complaint letters were in evidence signed by the purported agent. The landlord testified that the correspondence repeatedly makes reference to "*our suite*" which, according to the landlord, would indicate that the purported agent was sharing the rental unit with the original tenant.

The landlord testified that the purported agent had previously made an application for dispute resolution to the Residential Tenancy Branch seeking a monetary order against the landlord and had, on that prior application form, clearly identified himself as a co-tenant inhabiting the suite.

The landlord testified that the purported agent had also made his own application to Small Claims Court, which he had filed under his name, seeking \$7,456.00 compensation from the landlord for not repairing alleged damage to the rental unit. According to the purported agent's statement on the court documents, the repair issues had continued from December 2008 to March 2012. A copy of this Small Claims Court application was in evidence. The purported agent's monetary claim against the landlord is apparently before the Courts at the present time.

The landlord testified that they had, until recently, taken the original tenant at her word that there was not an additional occupant sharing the suite. However, according to the landlord, they have now confirmed that this was not true and that the person claiming to have only visitor status, that being, the purported agent, was actually sharing the suite as an unauthorized occupant for the duration of the tenancy since December 2005.

The landlord testified that the female tenant had originally signed a tenancy agreement under her own name as the tenant. The landlord testified that this agreement contained a clear term that prohibited additional occupants, unless they were reported to the landlord and first approved as co-tenants. The addendum of the tenancy agreement also stated that the tenant would be required to pay an additional \$25.00 per month for each additional occupant

beyond the original tenant. A copy of this tenancy agreement was in evidence. In the tenancy agreement, Addendum A, Item 1 states in part:

*“The tenant shall otherwise pay an additional \$25.00 rent per month for each additional occupant that permanently resides in the rental premises. The permanent occupant will be added onto the Tenancy Agreement with his/her signature. “*

The landlord testified that the addendum was signed by the tenant acknowledging her responsibilities. The landlord stated that they are now seeking rental arrears owed for the additional resident in the suite dating back to December 1, 2005 when the tenancy first commenced, because they feel that the evidence verifies that the purported agent has been living in the suite and sharing it since December 2005 as an unauthorized co-tenant.

The person appearing for the respondent, identified as “*purported agent*”, disputed the landlord’s testimony, and stated that he was only a frequent visitor in the suite because he wanted to spend time with his family. The tenant testified that he often assisted the tenant with various problems that arose with her tenancy. The purported agent made reference to a signed affidavit from the original tenant stating:

*“I have no knowledge of (the purported agent) ever being an illegal occupant and (the purported agent) has never been an occupant in my suite”*

The tenant who signed the affidavit was not available for cross examination with respect to the above statement.

The purported agent also denied that he had ever identified himself as a co-tenant on his previously filed application for dispute resolution and pointed out that he had only signed that application as an “*agent*” for the true tenant.

With respect to the application he made to Small Claims Court seeking compensation for suite repairs against the landlord, the purported agent stated that, during the tenancy, he was compelled to complete necessary repairs to the tenant’s suite because the landlord had neglected to maintain the unit and the landlord had specifically directed their tenant to delegate the repair work to him.

According to the purported agent, he completed significant repair work to the suite because it was needed to ensure liveable conditions for his family, but he emphasized that he did so only in the capacity of an interested third party, *not* as a co-tenant inhabiting the suite. The purported agent pointed out that his address

shown on the Small Claims Court application was a box number located at a commercial centre address that was a completely different address than the dispute address.

The purported agent also pointed out evidence he had submitted showing that rental payments were made by him to a holding company. The tenant called attention to copies of numerous intermittent hand-written receipts showing varying amounts paid by the purported agent to the holding company over a period from September 2007 to June 2012.

A copy of a communication was submitted into evidence by the purported agent, titled "*Residency and Business Premises Agreement*". This document was not on company letterhead, but included the following typed statement:

*"Effective January 1, 2006. In consideration of \$1.00 and other valuable consideration, (holding company CFO) in possession of premises located at (address- Vancouver, BC), hereby grants sub-possession of the said premises to (purported agent) such premises to be used by (purported agent) as a residence and a business address for service ..."*

Also in evidence was a copy of another letter, without company letterhead, dated December 31, 2009 from the same holding company to the purported agent with the notation:

*"Re: Amendment to Residency and Business Premises Agreement dated effective January 1, 2006".*

This communication indicates that:

*"the scope of the above-referenced sub-possession Agreement is hereby expanded to include your accommodation at the mining operations camp site"*

The above letter mentions two specific sites, one in Canada and the other in the United States and states that the sub-possession would continue, "until the *geological exploration programs in the regions are concluded.*" The letter further indicates that, "*This agreement, as amended, is an Addendum to the initiating Exploration Agreement dated January 14, 2009.*"

#### Analysis: Preliminary Matter

I have considered the evidence before me and I accept that the purported agent did make a past application for dispute resolution with his name shown on the original application as one of two co-tenants. I find that the official records at

Residential Tenancy Branch that were created at the time of the application, based on the documentation submitted by the tenants, clearly support the landlord's position that two applicant tenants had filed for a dispute resolution hearing as co-tenants, one of whom was the purported agent. Although the records also show that purported agent apparently amended the R.T.B. application at a later date, he still left his name remaining in the space on the application form as applicant co-tenant, but had added "agent" behind his signature on the second page.

I also accept the evidence showing that the tenant had sent correspondence to the landlord discussing "*our suite*" as if he was a co-tenant. The communications were only signed by the purported agent.

In addition, I accept the evidence submitted by the purported agent, showing that he had made an application against the landlord to be heard in Small claims Court. Regardless of what mailing or service address he chose to use, I find that he made a monetary claim for repairs to the subject rental suite located at the dispute address. I note that this application was filed with Small Claims Court on October 29, 2012 showing the purported agent's name as "*Claimant*" and the landlord's name as "*Defendant*".

Although this matter is apparently before the Courts at the present time, I find that this fact does not circumvent a decision on the particular application before me because the issue to be decided at this hearing only relates to an application and claim by the *landlord* against the tenant *for rental arrears owed*.

With respect to the purported agent's evidence of payments that he made to the holding company reportedly for business and residency purposes, I find that, the fact that the purported agent was actively engaged in other legal contracts, the data he provided is not sufficient evidence to overcome other compelling proof that the purported agent was sharing the suite as a co-tenant at the dispute address.

I find that, other than the informal typewritten letters indicating that the purported agent was allegedly paying for business premises and housing in other locations, the purported agent did not submit any other more determinative evidence such as valid identification cards, official documents, driver's licence, bank statements, Income tax notification or even invoices, that would naturally include his current residential address.

Given the totality of the information and testimony before me, I therefore find on a preponderance of evidence, that the purported agent was a co-tenant residing in

the disputed rental suite and was sharing it with the original tenant during the period in question, from December 1, 2005 until the tenancy was terminated by the landlord on November 30, 2012.

### **Background and Evidence**

The tenancy began on December 1, 2005 and the rent at the time that the agreement was signed was \$975.00. A security deposit of \$487.50 was paid. A copy of the tenancy agreement was submitted into evidence signed by the female co-tenant and contained a term that required an additional \$25.00 be paid as rent for each additional person occupying the suite.

The landlord testified that it has been established that there were two co-tenants residing the suite and that one of the co-tenants was not authorized, nor had the required \$25.00 rent been paid from the outset of the tenancy. The landlord testified that this was a violation of the agreement and rental arrears for the past 7 years have been incurred at the rate of \$300.00 per year. The landlord is therefore claiming \$2,100.00 pursuant to the tenancy agreement term.

The co-tenant disputed that any additional rent was owed for the period in question and maintained that he was only a guest visiting the suite, until he recently found it necessary to remain on site to protect his family after a violent confrontation perpetrated by the landlord.

The landlord testified that they had issued a Two Month Notice to End Tenancy for Landlord's Use and that the tenant had failed to file an application within the required 15 days to dispute the Notice. A copy of the Two Month Notice to End Tenancy for Landlord's Use was in evidence dated September 24, 2012. The purported effective date was November 30, 2012. The landlord is seeking an Order of Possession based on the Notice.

### **Analysis Rental Arrears**

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

In this instance, the landlord is requesting enforcement of a term in the tenancy agreement requiring the tenant to pay additional rent of \$25.00 per month for each additional occupant. I find that this term must be enforced under the agreement.

With respect to the rent owed, pursuant to the tenancy agreement, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant failed to pay the additional \$25.00 rent for the additional occupant for the duration of the tenancy.

Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$2,150.00 comprised of accrued rental arrears of \$2,100.00 and the \$50.00 cost of the application.

I hereby order that the landlord retain the tenant's \$487.50 security deposit plus \$17.25 interest totaling \$504.75 in partial satisfaction of the claim leaving a remainder of \$1,645.25 still outstanding to the landlord.

I hereby grant the landlord an order under section 67 for \$1,645.25. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Analysis Notice to End Tenancy**

Under section 49(6) (e) of the Act under, "*Landlord's notice: landlord's use of property*", the Residential Tenancy Act states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

Section 49(8) of the Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. It was confirmed that the tenant did not file an application to dispute the Notice.

Section 49(9) of the Act provides that, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find that the Notice received by the tenant contained the above information and the tenant could have disputed the Notice, had the tenant chosen to do so.

I find that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use in the proper form that was fully compliant with the Act. I find that the tenant then failed to dispute the Notice within the required 15 days.

For the reasons above, I find that the landlord is entitled to an Order of Possession.

I hereby grant the landlord an Order of Possession effective 2 days after service on the tenant. This order is final and binding and may be filed in Supreme Court and enforced as an order of that Court if necessary.

### **Conclusion**

The landlord is successful in the application and is granted a monetary order against the tenant and an Order of Possession.

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: November 28, 2012.

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Residential Tenancy Branch