



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prospero International Realty Inc.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: CNC  
OPC

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for cause. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that an order of possession is sought in the event the tenant's application does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on June 01, 2009. Monthly rent is due and payable in advance on the first day of each month. At the outset of tenancy the monthly rent was \$1,100.00; the current amount of monthly rent was unable to be confirmed during the hearing. A security deposit of \$550.00 was collected on April 29, 2009.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated May 23, 2014. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is June 30, 2014. Reasons identified on the notice in support of its issuance are as follows:

Tenant has allowed an unreasonable number of occupants in the unit.

Tenant has assigned or sublet the rental unit without landlord's written consent.

The tenant filed an application to dispute the notice on June 02, 2014.

It appears there is no dispute that "TB" & "DF" moved into the unit with the tenant on or about December 19, 2013. The tenant's agent claims that "K," the landlord's agent, was aware of "TB's" & "DF's" arrival. "K" was not in attendance at the hearing, however, the landlord's agents in attendance testified that "K's" understanding was that "TB" & "DF" would be staying with the tenant on a short term basis. After "K's" management responsibilities at the building ended, "MS," who testified at the hearing, took over "K's" building management responsibilities in January 2014. It appears that it was not until early May 2014, when "MS" became aware that "TB" & "DF" had been living in the tenant's 1 bedroom unit. Shortly thereafter the landlord issued the 1 month notice to end tenancy for cause.

The tenant's agent claims that the tenant remained a resident in the unit throughout the approximate 5 month period while "TB" & "DF" also resided there. Further, the tenant's agent argues that "TB" & "DF" were simply "guest roommates," whose presence was principally for the purpose of assisting the tenant with payment of rent. With the passage of time it became apparent to the tenant's parents that the continued presence of "TB" & "DF" was having a negative impact on the tenant's health and wellbeing. Ultimately, through the involvement of the tenant's parents, "TB" & "DF" were removed from the unit with the assistance of Police on May 15, 2014.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

As earlier noted, section 47 of the Act speaks to **Landlord's notice: cause**. In part, this section provides as follows:

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

- (c) there are an unreasonable number of occupants in a rental unit;
- (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]*;

Clause # 13 of the subject tenancy agreement addresses ADDITIONAL OCCUPANTS:

No person other than those listed in paragraph 2 above, may occupy the rental unit. A person not listed in paragraph 2 above who resides in the rental unit for a period in excess of 14 cumulative days in any calendar year will be considered to be occupying the rental unit contrary to this Agreement and without right or permission of the landlord. This person will be considered a trespasser. A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such person to become an approved occupant. Failure to apply and obtain the necessary approval of the landlord in writing is a breach of a material term of this Agreement, giving the landlord the right to end tenancy after proper notice.

Clause # 16 of the subject tenancy agreement addresses ASSIGN OR SUBLET:

The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under this tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent. If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the Act.

Residential Tenancy Policy Guideline # 13 addresses "Rights and Responsibilities of Co-Tenants," and defines **Occupants** as follows:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Based on the documentary evidence and the affirmed testimony of the parties, I find on a balance of probabilities that the tenant neither undertook to assign the tenancy agreement to "TB" & "DF," nor sublet the rental unit to "TB" & "DF." Rather, I find that when "TB" & "DF" moved into the rental unit with the tenant's understanding that they would contribute toward the monthly rent, "TB" & "DF" became "occupants" of the rental unit. Accordingly, I find that the landlord's request for an order of possession on grounds that the tenant "has assigned or sublet the rental unit without landlord's written consent" must be dismissed.

With regard to the second grounds upon which the landlord seeks an order of possession (“unreasonable number of occupants”), first I note that “TB” & “DF” had vacated the unit several days prior to the landlord’s issuance of the 1 month notice.

Further, I note the definition in Merriam – Webster’s Collegiate Dictionary, Eleventh Edition, of “unreasonable:”

1. a. not governed by or acting according to reason  
b. not conforming to reason: ABSURD
2. exceeding the bounds of reason or moderation

While I note that the unit is a 1 bedroom unit, I find that the presence of 3 persons in the unit does not meet the threshold of “unreasonable,” or “absurd.” Accordingly, I find that the landlord has failed to meet the burden of proving entitlement to an order of possession on grounds that the tenant “has allowed an unreasonable number of occupants in the unit.”

Finally, if there was any previous lack of clarity around the requirements of clause # 13 in the tenancy agreement which addresses ADDITIONAL OCCUPANTS, there ought now to be none. Going forward, any failure to abide by this clause could potentially lead to issuance of a 1 month notice to end tenancy for cause on grounds of an alleged “breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

### Conclusion

The landlord’s 1 month notice to end tenancy for cause is hereby set aside, and the tenancy presently continues 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: July 22, 2014

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Residential Tenancy Branch

