



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord appeared. The tenant appeared. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties admitted service of the dispute resolution package and the evidence before me.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to order requiring the landlord to comply with the Act, regulation or tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

## Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in May 2012. Monthly rent in the amount of \$1,455.00 is due on the first.

On 26 January 2016, the landlord served the tenant with the 1 Month Notice by posting that notice to the tenant's door. The 1 Month Notice was dated 26 January 2016 and set out an effective date of 29 January 2016. The 1 Month Notice set out that it was given as the tenant has assigned or sublet the rental unit/site without landlord's written consent. I was not provided with a copy of the 1 Month Notice.

On 27 January 2016, GB sent an email to the landlord informing the landlord that GB is a friend of the tenant and that he and another friend Gr were taking care of the tenant's rental unit.

The landlord provided me with a printout of a posting from a popular accommodation sharing website. The landlord testified that the posting was brought to his attention by another occupant of the residential property. The landlord testified that he printed this photograph on or about 14 December 2015. The landlord testified that he saved and printed the posting from the site, but he could not explain how the image was captured. The landlord submitted that this printout is evidence that the tenant was subletting the rental unit without his permission. The landlord agreed that he provided permission to the tenant to sublet in 2013.

The tenant denied that she sublet the rental unit without the landlord's permission.

The tenant testified that the photographs in the posting were from 2013. The tenant denied the landlord's submission that the photograph was from 2015. The posting was created by a spouse of a friend that was going to assist the tenant with subletting in 2013. The tenant testified that the posting was created without her knowledge in 2013. The tenant testified that she has not had any contact with this person since 2013 as her rental unit sublet on 6 November 2013.

The tenant testified that the posting was created 4 November 2013. The tenant testified that the posting could be viewed by browsers, but could not be booked. The tenant testified that the posting was never used to secure a sublet.

The tenant testified that her mother stayed in the rental unit for a day or two after the tenant left the city. The tenant testified that her friends Gr and GB agreed to visit the rental unit to check on things while she was away. The tenant testified that her friend GB stayed in the rental unit overnight for a few days a week. The tenant did not receive compensation from GB for his use of the unit.

The tenant testified that the reference to the heat being “quirky” is not indicative of timing of the posting as the heat as always been quirky.

I was provided with a written statement from GB. GB set out that he is a friend of the tenant and that the tenant permitted him to use the rental unit in January. GB set out that he did not pay the tenant compensation for this use.

I was provided with a written statement from Gr. Gr sets out that she is a friend of the tenant and that she attended at the rental unit while the tenant was away to care for the place.

The tenant provided me with a letter from the website. The letter confirms that no bookings were ever made through this posting. The letter confirms that the booking calendar for the posting was always blocked and unavailable to be booked.

The tenant provided me with screen shots of the posting’s calendar to prove that it was unavailable for booking in both December 2015 and January 2016. The tenant also provided screenshots of the website report showing that no bookings were made in 2013, 2014 or 2015. The tenant provided a screenshot of the website report showing that no bookings, views or requests of the posting occurred in November 2015, December 2015, January 2016 or March 2016.

The tenant provided a letter from the website confirming that her personal account had never been used for “hosting activities”.

I was provided with a letter from KS dated 18 February 2016. That letter sets out that another occupant of the residential property viewed the posting in January.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

On 26 January 2016, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as the tenant has assigned or sublet the rental unit/site without landlord's written consent. Subparagraph 47(1)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a 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.

In order to prove the 1 Month Notice is valid, the landlord must show that the tenant did purport to sublet the rental unit.

The landlord testified that persons other than the tenant were observed entering into the rental unit. The landlord testified that the posting was observed on the website. The tenant testified that the persons observed were her friends that were looking in on her rental unit. The tenant testified that the posting was set up without her knowledge and was never used for the purpose of subletting the rental unit. The tenant denied she sublet the rental unit without the landlord's permission.

I find the tenant's explanation regarding the posting to be highly credible. In particular, the tenant's testimony is well corroborated by statements from the website on which the posting was made. On the basis of the evidence before me I find that the tenant did not sublet the rental unit for the period in question and that the persons attending at the rental unit were her guests. On this basis, I find that the 1 Month Notice not supported by the evidence and is of no force and effect. The tenant's application to cancel the 1 Month Notice is granted. The landlord is not entitled to an order of possession.

The tenant's application does not set out specifically with what she seeks the landlord to comply. The tenant stated at the hearing that this claim related to the interpersonal fallout from the 1 Month Notice.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself.

I find that the tenant did not set out any other remedies sought in such a manner that the landlord would have known to prepare to respond. Further, as I explained to the parties at the hearing, general regulation of the parties' interpersonal relationship is beyond the reach of the Residential Tenancy Branch.

As the tenant has been successful in this application, she is entitled to recover her filing fee in the amount of \$100.00 from the landlord.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

Accordingly, the tenant may recover the \$100.00 monetary order by deducting that amount from rent or seek recovery of that order directly from the landlord. If the tenant elects to deduct his monetary order from rent, payment of the net amount of rent will satisfy the tenant's obligations pursuant to section 26 of the Act.

### Conclusion

The 1 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

I issue a monetary order in the tenant's favour in the amount of \$100.00. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 subsection 9.1(1) of the Act.

Dated: April 05, 2016

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Residential Tenancy Branch