



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, FF  
OPC

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 1 month notice to end tenancy for cause / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing, through her daughter / agent, the landlord confirmed that she seeks an order of possession in the event the tenant's application for cancellation of the 1 month notice does not succeed.

### Issue(s) to be Decided

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

### Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on July 01, 2014. Monthly rent of \$980.00 is due and payable in advance on the first day of each month, and a security deposit of \$490.00 was collected.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated May 01, 2016. The notice was served by way of posting to the unit door on that same date. A copy of the notice was submitted in evidence. The reason identified on the notice in support of its issuance is as follows:

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

The tenant filed an application to dispute the notice on May 10, 2016.

The tenancy agreement provides for only one tenant, "JBM," to occupy the unit, however, sometime in October 2015, "HA," a roommate moved into the unit with "JBM." While the tenant testified that this was initially considered to be a temporary arrangement, with the passage of time both tenant "JBM" and "HA" have continued to reside in the unit on a permanent basis. The tenant testified that he did not seek the landlord's consent for "HA" to become a permanent occupant of the unit, but he claims he understood that the landlord had no objection. The landlord claims she did not consent to "HA" moving into the unit, and takes the position that if both "JBM" and "HA" wish to continue to reside there, the monthly rent must be raised to \$1,200.00. For his part, tenant "JBM" proposes paying only \$1,100.00 with the natural gas utility included in that amount.

Discussion around a potential resolution of the dispute included consideration of whether the proper grounds had been identified on the notice. Specifically, tenant "JBM" testified that from his perspective there are not "an unreasonable number of occupants in the unit," as there are 2 bedrooms and the unit comprises approximately 750 square feet. In view of one potential outcome which is that the subject notice is set aside, and the tenancy continues uninterrupted until the landlord issues another 1 month notice, which may identify a more accurate ground for its issuance, the parties undertook to resolve the dispute.

### Analysis

Section 63 of the Act addresses **Opportunity to settle dispute**, and provides that the parties may attempt to settle the dispute during a hearing. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

### **RECORD OF SETTLEMENT**

- that tenant "JBM" and roommate "HA" will vacate the unit by not later than **July 31, 2016**, and that an **order of possession** will be issued in favour of the landlord to that effect;
- that monthly rent for July remains unchanged at **\$980.00**.

As the parties resolved the dispute during the hearing, I find that the tenant has established entitlement to recovery of ½ the \$100.00 filing fee. Accordingly, I order that the tenant may recover this amount by way of withholding **\$50.00** from rent due on July 01, 2016, leaving a balance of rent owed for July 2016 of **\$930.00** (\$980.00 - \$50.00).

As the end of tenancy nears, the attention of the parties is drawn to section 37 of the Act which addresses **Leaving the rental unit at the end of a tenancy**, and section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **July 31, 2016**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby order that the tenant may recover ½ the filing fee by way of withholding **\$50.00** from payment of rent due on July 01, 2016.

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: June 14, 2016

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Residential Tenancy Branch