



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated August 31, 2016
- b. An order to recover the cost of the filing fee.

The Application for Dispute Resolution filed by the Landlord seeks the following

- a. Whether the Landlord is entitled to an Order for Possession.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on August 31, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord carries on business on September 9, 2016. I find that the Application for Dispute Resolution filed by the Landlord was personally served on Tenant on October 7, 2016.

VMC was a party to the tenancy agreement which was signed in 2006. However, has never lived in the rental unit and never paid the rent. The Notice of Rent Increases given by the landlord over time do not identify him as a tenant. I determined VMC is no longer a tenant and I dismissed any claim against him.

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated August 31, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to the cost of the filing fee?

### Background and Evidence

The tenancy began on June 1, 2006. The present rent is \$1586 payable in advance of the first day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

The tenancy agreement included the following provision

“14. USE OF RENT UNIT. The tenant and his guest must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial or business purpose....”

16. ASSIGN OR SUBLET. The tenant may assign or sublet the rental unit to another person with the written consent of the landlord...”

### Grounds for Termination:

The Notice to End Tenancy relies on section 47(1)(h) and (i) of the Residential Tenancy Act. That section provides as follows:

47(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(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];

The landlord submits it is entitled to end the tenancy as the tenant is renting his unit through AirBnB. Verbal warnings were given in early August. The landlord testified the tenant continues to use the rental unit for Air BnB purposes. The landlord acknowledged written notice of the breach of a material term was given. The landlord submits this is a breach of a material term of the tenancy agreement as the tenant is using the rental unit for business purposes.

The tenant disputes that he used the rental unit for business purposes but admits he used it for an AirBnB. However, he testified and provided considerable evidence to show that once he was given the oral notice on August 8, 2016 he contacted the AirBnB provider to cancel his listing. He testified that prior to August 8, 2016 the AirBnB guests were allowed to stay in a room but he was always in the rental unit. He further testified the people the landlord saw at the end of August were friends from Germany and were not AirBnB users.

Tenant's Application:

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.

I accept the submission of the landlord that the use of the rental unit as an AirBnB amounts to the breach of a material term of the tenancy agreement which states the rental unit is not to be used for business purposes.

However, section 47(1)(h) requires that the landlord give written notice of the breach and a reasonable time to rectify the breach. The landlord failed to give written notice to the Tenant which is required by the Act. On this basis alone there is insufficient grounds to end the tenancy under section 47(1)(h).

Further, I determined that the tenant has rectified the breach within a reasonable time after the landlord gave notice on August 8, 2016.

I also determined the landlord failed to prove the tenant has assigned the rental unit. The tenant testified that when he had guests under an AirBnB he permitted the guest to live in a room but at all times he was living in the rental units. This is not a assignment or sub-let as the tenant has not leased the rental unit.

As a result I ordered that the Notice to End Tenancy dated August 31, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful with this application I ordered

that the landlord pay to the Tenant the sum of \$00 for the cost of the filing fee such sum may be deducted from future rent.

Landlord's Application

I dismissed the landlord's application for an Order for Possession and the cost of the filing fee as the Notice to End Tenancy has been cancelled.

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: October 27, 2016

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Residential Tenancy Branch