



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, FF, OLC, RP, CNL

### 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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49.

Due to an issue with evidence, the "first hearing" on November 2, 2016 was adjourned to allow the parties an opportunity to respond.

The tenant and landlord's agent JB (the "landlord") attended both hearings. The landlord's agent JW attended the first hearing, not the second hearing. In both hearings, all parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue - Service of Documents

At the first hearing, I provided specific instructions to the parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision adjourning the first hearing and outlining these specific instructions.

At both hearings, the landlord confirmed receipt of the tenant's application and subsequent 26 page evidence package for the dispute resolution hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and 26 page evidence package.

The landlord confirmed receipt of the tenant's 9 page evidence package served following the first hearing. Accordingly, I find that the landlord was duly served with the tenant's written evidence, pursuant to sections 88 and 90 of the *Act*.

The tenant confirmed receipt of the landlord's 49 page evidence package, which I directed the landlord to serve to the tenant after the first hearing, as per my interim decision. The tenant also confirmed receipt of the landlord's subsequent 2 page evidence package following the first hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 49 and 2 page evidence packages.

#### Preliminary Issue - Sever

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 1 Month Notice or 2 Month Notice. Accordingly I find the remaining portion of the tenant's application must be severed and must be dealt with separately through an application. Therefore the portion of the tenant's application seeking an order for landlord compliance and repairs is dismissed.

#### Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to have the landlord's 2 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant authorized to recover the filing fee for this application from the landlord?

#### Background and Evidence

As per the testimony of the parties, the tenancy began on September 15, 2013 on a fixed term until September 30, 2014 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,734.90 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$825.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated August 31, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- tenant has allowed an unreasonable number of occupants in the unit/site
- tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord

- tenant or a person permitted on the property by the tenant has put the landlords property at significant risk
- tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- tenant has assigned or sublet the rental unit/site without landlord's written consent

The tenant acknowledged receipt of the landlord's 2 Month Notice dated October 27, 2016 by way of posting to her rental unit door. The grounds to end the tenancy cited in that 2 Month Notice were;

- the rental unit will be occupied by the landlord or the landlord's close family member

### *Landlord*

The landlord testified that the 1 Month Notice was issued on the basis that the tenant was subletting the rental unit through the home stay website AirBnB. It is the landlord's position that this action is in contravention of the signed tenancy agreement, strata and city by-laws. The landlord testified that because the landlord's insurance policy does not cover such rental arrangements the tenant's action of subletting the rental unit through AirBnB put the landlord's property at significant risk. In an effort to support his position, the landlord has provided photographs, emails from the building manager, a letter from the building manager, an email from another building occupant and letter from strata.

In relation to the 2 Month Notice, the landlord testified he issued the notice at the direction of the owners of the rental unit, based on the owners' intention to move into the rental unit.

### *Tenant*

The tenant testified that she did not sublet the rental unit and remains the sole occupant. The tenant confirmed she had guests stay with her but testified that she has not allowed guests to stay in her absence.

In regards to the 2 Month Notice, it is the tenant's position that this notice was not issued in good faith but rather as a result of the ongoing dispute.

### Analysis

#### 1 Month Notice

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant. The landlord provided evidence in the form of oral testimony and written documents.

Residential Tenancy Policy Guideline #19 Assignment and Sublet ("Policy Guideline #19"), establishes that a rental unit rented via AirBnB or other vacation/rental listing services does not constitute a true sublet, unless the tenant has moved out of the rental unit or the tenant is acting as an agent of the landlord. Pursuant to Policy Guideline #19, if a tenant is allowing their rental unit or space within their rental unit to be used for a commercial venture, such as a vacation or travel accommodation, a landlord may issue a 1 Month Notice for a breach of this material term.

While in this situation it is evident that the tenant is not acting as an agent of the landlord, I find the landlord has provided insufficient evidence to establish the tenant has moved out of the rental unit. On this basis, I find the landlord has not met his burden of proof that the tenant sublet as defined under the *Act*, and therefore find the landlord cannot end the tenancy based on this ground.

In relation to the other grounds the landlord has asserted, I find the landlord has failed to provide documentary evidence in the form of a tenancy agreement, insurance policy, strata and city bylaws to establish a sublet is in fact a contravention of these agreements and bylaws.

Overall, I find the landlord has failed to satisfy his burden of proving the reasons behind the 1 Month Notice. Accordingly, the 1 Month Notice is set aside.

## 2 Month Notice

The *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenant questioned the good faith of the landlord suggesting the 2 Month Notice was a direct result of the ongoing dispute. When the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to use the rental unit for the purposes stated on the 2 Month Notice.

The landlord testified that he was directed to serve the 2 Month Notice as the owners planned to occupy the rental unit. In relation to the 2 Month Notice, during the hearing the landlord testified that he "was just doing his job" and that "it was nothing personal." The owners were not present for the hearing to speak of their intentions and the landlord provided insufficient documentary evidence to support his testimony that the owners planned to occupy the unit. Therefore, I find the landlord has provided insufficient evidence to show on a balance of probabilities that at the time of issuing the 2 Month Notice, the landlord sought to end the tenancy for the owners' occupancy of the rental unit. I find it more probable that the landlord sought to end the tenancy in an effort to end the ongoing dispute between the landlord and the tenant.

Based on these reasons I find the landlord has not acted in good faith in issuing the 2 Month Notice. Accordingly, the 2 Month Notice is set aside.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

The tenant's application for an order to the landlord to make repairs to the rental unit is dismissed with leave to reapply.

The 1 Month and 2 Month Notices are set aside. The tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to retain \$100.00 for the filing fee from future rent.

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: December 21, 2016

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Residential Tenancy Branch