



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 608821 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AS, CNC, MNDC, OLC, FF, MNSD

### 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;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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. Both parties confirmed that they received each other's documentary evidence.

### Preliminary Issue

At the outset of the hearing counsel for the tenant advised that they had received an email from the previous building manager just a few hours before this hearing. The email stated that he in fact gave the tenant permission to sublet her unit. The landlord

opposed this evidence as it was late and stated that he had no real value as they don't know how the former property manager conducted his business. Counsel for the tenant advised that despite numerous attempts to obtain this information it was only obtained this morning as the previous property manager had been away in the United States. Counsel submits that this evidence should be considered as it addresses the vital issue of the dispute.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure states as follows:

**3.17 Consideration of new and relevant evidence**

*Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.*

I find that the e-mail from the former property manager is new and relevant and is accepted for the purposes of this hearing.

Issues to Decide

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award for the return of a portion of her pet damage and security deposits?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to assign or sublet because the landlords' permission has been unreasonably withheld?

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

Background and Evidence

The landlords' agent gave the following testimony. The agent testified that the owner purchased the building in 2016 and took possession on November 1, 2016. The agent testified that it came to their attention that the subject tenant was subletting her unit without permission and at a higher rate than they were charging her. The agent testified

that the tenant is on a month to month agreement and subletting is not available to her nor was it approved. The agent testified that the tenant has conducted herself in bad faith. The agent testified that she can move back into the unit and have the present sub-tenant move out or the sub tenant can negotiate a new tenancy agreement with the landlord. The agent testified that the tenant has taken advantage of a grey area in the Act and is financially benefitting from it. The agent testified that the previous owner informed him that he did not give the tenant written permission to sublet the unit. The landlord requests an order of possession.

The tenants counsel gave the following submissions. Counsel submits that this has been a long standing arrangement between the tenant and the previous property manager JY. Counsel submits that even the previous and still current building manager “Liisa” was fully aware of the tenants’ arrangement and was “horrified” to learn that the new owners issued a notice to end tenancy on the basis of not having permission to sublet. Counsel submits that the numerous documents and emails submitted in evidence clearly demonstrates that the property and building managers were aware that the subject tenant had sublet the unit and that fully accepted it; “implicitly and completely”.

Counsel submits the new owner made no effort to investigate or discuss the matter with the subject tenant but chose to issue a notice to end tenancy. Counsel submits that their behaviour has been intimidating to the point that the tenant is seeking the equivalent of one month’s rent - \$935.00 for the loss of quiet enjoyment for this frivolous and vexatious notice. Counsel submits that the landlord should be directed to allow this tenancy to continue as it is presently structured.

### Analysis

When a landlord issues a notice to end tenancy under Section 47 of the Act they bear the responsibility of providing sufficient evidence to support the issuance of that notice. The landlord’s position was that the previous owner did not give the tenant written notice to sublet the unit, despite what the previous property manager says.

Residential Tenancy Policy Guideline 19 addresses the issue before me as follows:

*Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not*

*specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.*

After considering all the documentary evidence, testimony, submissions and arguments, I find that the landlord is not entitled to end the tenancy or an order of possession for the following reasons.

The tenant and her counsel gave very clear information that the tenant is definitely not seeking to assign the tenancy as the tenant is seeking to return in the near future to care for her ailing mother. In addition, counsel advised that the tenant and the subtenant have an excellent and flexible relationship. Counsel submitted that the tenant has not given or promised any rights beyond her own tenancy agreement to the subtenant.

In addition, the behaviour, conduct and knowledge of the previous building manager and property manager clearly demonstrate that they were fully aware that the tenant was subletting her unit and had no issue with it. I find that this amounts to an implied waiver of the written permission requirement for subletting. The e-mails and the manner that the day to day business was dealt with between the managers and the subtenant also demonstrate knowledge and permission to allow the sublet. This evidence alone is sufficient to have the notice to end tenancy set aside. The late e-mail from JY only amplifies the facts.

Based on all of the above, and on a balance of probabilities, the landlord has failed to provide sufficient evidence to support the issuance of the notice on the ground they have applied for on the notice, and I therefore set aside the notice. The notice is of no effect or force.

The tenant has also sought a monetary order or rent abatement in the amount of \$935.00 based on having to deal with this situation. I do not agree with the tenants' counsel submission that the notice to end tenancy issued by the landlord was frivolous or vexatious. The landlord felt that they had an issue that needed to be addressed through dispute resolution through the Residential Tenancy Branch. I find that the landlord used all legal and reasonable means to address the issue and although they were not successful in ending the tenancy, I find that they acted in accordance with the Act; accordingly, I dismiss this portion of the tenant's application.

Counsel advised that the security deposit box was “checked” off in error when filing this application. As I have found that the tenancy continues, the issue of the security deposit can be addressed whenever the tenancy comes to an end.

As the tenant has only been partially successful in this application, she must bear the cost of the filing fee.

### Conclusion

The One Month Notice to End Tenancy for Cause dated November 25, 2016 with an effective date of December 31, 2016 is set aside. It is of no effect or force. The tenancy continues.

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: January 16, 2017

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Residential Tenancy Branch