



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES INC.  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNSD, OLC

### Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for orders as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 *Act*;
- an Order for the landlord to not raise the rent above the legislated amount of 3.7% pursuant to section 62 of the *Act*; and
- a return of the security deposit pursuant to section 67 of the *Act*.

Both the tenant and the landlord appeared at the hearing. They were both given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord stated that on or around December 30, 2016, a 1 Month Notice was posted on the door of the rental unit. Although the tenant confirmed receiving the 1 Month Notice, neither party could confirm the exact date of service. Pursuant to sections 88 and 90 of the *Act*, I find that the deemed date of service for the 1 Month Notice is January 2, 2017.

On January 12, 2017, the landlord was served by way of Registered Mail with the tenant’s evidentiary package and Application for Dispute Resolution (“Application for Dispute”). A Canada Post tracking number was provided to the hearing. The landlord acknowledged receipt of this package and was therefore served pursuant to sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

- Should the landlord's 1 Month Notice be cancelled? If not, should an Order of Possession be issued for cause?
- Should the landlord be directed to only raise the rent pursuant to the legislated amount of 3.7%?
- Is the tenant entitled to a return of her security deposit?

### Background and Evidence

A copy of the tenancy agreement was provided for the hearing as part of the tenant's notice of dispute resolution. The tenancy began on August 21, 2012 and began as a one year fixed-term lease, continuing on to a month-to-month tenancy after this time. At the outset of the tenancy, rent began at \$830.00, due on the 1<sup>st</sup> day of the month. Rent has since been raised to \$885.00 per month. A security deposit of \$415.00 continues to be held by the landlord.

On or around December 30, 2016, the landlord posted a 1 Month Notice to End Tenancy for Cause on the door of the rental unit. The reason cited by the landlord as cause was alleged subletting of the rental unit without the landlord's written consent.

The landlord stated in June 2016, she was contacted via email by the tenant about the possibility of a sublease. The landlord testified and produced in her evidence a copy of the email exchange demonstrating that she was denying this request.

During the course of the summer 2016, occupant, MC began staying at the apartment with the tenant's consent. The tenant stated that due to an ongoing family emergency, work commitments and MC recently undergoing a surgery procedure, that MC would be occupying the unit while the tenant was in Alberta attending to her various obligations.

Around the end of December 2016, the caretaker of the building was performing some maintenance work in the building and noticed that the suite in question was in fact not vacant and there appeared to be someone inhabiting the unit. The landlord contacted the tenant about this. The tenant informed the landlord that her friend MC was currently in the rental unit as her guest and roommate, and would be tending to the apartment while the tenant was busy with her various work and family obligations in Alberta.

The tenant testified that she considered the rental unit to be her home and intended to return to the property following the conclusion of her employment contract. She noted that because of the nature of her work, she would constantly be travelling and enjoyed having MC at the apartment as it gave her a sense of security. A requirement of her rental insurance was that she had an occupant in the unit. Furthermore, the tenant

stated that in addition to rental insurance, all cable, internet and hydro bills for the unit are in her name and paid by her.

### Analysis

Having issued a notice to end this tenancy, the landlord has the burden of proving she has cause to end the tenancy. The landlord has issued a 1 Month Notice to the tenant for having sublet her apartment without receiving written permission.

Section 47(1)(i) of the *Act* notes;

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: ...

(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 tenant maintained during the course of the hearing, that MC was her guest and roommate and was not a subletter. Furthermore, the tenant pointed to the tenancy agreement which contained no clause preventing her from taking in a roommate or limiting the number of days which a guest could stay in her apartment.

The landlord acknowledged that she had no evidence that the tenant had advertised the rental unit on social media or otherwise to find a sublet and noted that it was “impossible to verify” if the tenant had ever advertised the unit in any manner. She explained that she was relying on the tenant’s email from June 2016 inquiring about subletting her apartment and the observations of the building manager, to conclude that the tenant had taken on a subletter.

The definition of what constitutes a subletter is very narrow and is contained in *Residential Tenancy Policy Guideline #19*. It notes;

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situations where the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant. 'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the Act, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship, as described above. If there is a landlord/tenant relationship, the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply.

When determining whether a One Month Notice to End Tenancy for cause was issued properly, the arbitrator will examine a number of factors, including the terms of the tenancy agreement between the original landlord and the tenant, whether the agreement contains terms restricting the number of occupants or the ability of the tenant to have roommates and the intent of the parties.

As noted above, the tenancy agreement between the parties is silent on guests, or roommates that the tenant may obtain during the course of the tenancy. No evidence was presented by the landlord to demonstrate that a subletting agreement had been entered into between the tenant and the occupant, and evidence was presented by the tenant that she continues to pay the rent, and all of the bills associated with the tenancy.

I find that the landlord has failed to demonstrate that subletting of the unit has occurred and the tenant is successful in cancelling the landlord's 1 Month Notice.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application pursuant to section 72 of the *Act*.

#### Analysis Monetary Order – Return of Security Deposit

The tenant explained that she misunderstood the forms from the *Residential Tenancy Branch* and interpreted an application for a Monetary Order as being required should her tenancy be ended at the hearing.

As this tenancy is continuing, the tenant's application for a return of her security deposit is dismissed.

#### Analysis - Section 62 – Landlord to Comply with *Act* for rental increase

The tenant stated that she was confused around the exact amount of the rental increase that was being asked of her by the landlord. The landlord clarified that in October 2016 she mailed a notice to the tenant informing her of a 3.7% increase on her rent to \$854.00. This rental increase was to begin on January 1, 2017.

The tenant stated that she understood this to be within the parameters of the Act and was happy to oblige paying this increase.

The tenant's application to have the landlord comply with the Act pursuant to section 62 is therefore dismissed.

#### Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the Act.

The tenant's application for a return of the security deposit is dismissed.

The tenant's application to have the landlord comply with the Act pursuant to section 62 is dismissed.

I issue a monetary order of **\$100.00** in the tenant's favour, which allows the tenant to recoup the filing fee of this application. Should the landlord 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. The tenant may also choose to withhold \$100.00 from a future monthly rent payment in order to implement this monetary award.

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: February 6, 2017

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Residential Tenancy Branch