



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNWEST RESOURCES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC, AAT

### Introduction

On February 9, 2017, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause ("the Notice") be cancelled and for an order to allow the Tenant access to or from the site.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Did the Tenant apply to dispute the notice to end tenancy on time?
- Was there a breach of a material term of the tenancy agreement?
- Should the notice to end tenancy be cancelled?

### Background and Evidence

Both parties testified that the tenancy began on February 1, 2013, on a month to month basis. Rent in the amount of \$509.00 is payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$247.50.

The Landlord testified that the Tenant has person living with her who is not approved by the Landlord to live in the unit. The Landlord testified that the person living in the unit is a former Tenant who caused damage to a rental unit and did not pay the rent. The Landlord testified that she spoke to the Tenant about the occupant D.L. residing in the unit and asked her to remove him. The Landlord testified that she decided to issue a notice to end tenancy.

The Landlord testified that she spoke to the Tenant regarding the occupant D.L. on a couple of occasions but she did not issue a warning letter or breach letter to the Tenant.

The Landlord testified that she served a 1 Month Notice to End Tenancy For Cause to the Tenant on January 30, 2017.

The reason for ending the tenancy within the Notice is:

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch

The Tenant testified that she received the Notice on January 30, 2017. The Tenant disputed the Notice on February 9, 2017.

The Tenant's advocate D.L. testified that he is not living at the dispute address and that he maintains a separate residence in the city of Cache Creek. He testified that he stays with the Tenant as a guest on occasion.

The Tenant's advocate submitted that the Landlord has not issued any written notices of a breach.

In response, the Landlord submitted that the Tenant does not live where he states he does. The Landlord did not have any documentary evidence before me to support her allegation of this.

### Analysis

Residential Tenancy Policy Guideline #8 Unconscionable and Material Terms provides:

*To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*

*that there is a problem;*

*that they believe the problem is a breach of a material term of the tenancy agreement;*

*that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*

*that if the problem is not fixed by the deadline, the party will end the tenancy.*

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant disputed the 1 Month Notice within the timeframe required under the Act. The Tenant does not need to be granted more time to dispute the Notice.

I find that the Landlord is seeking to end the tenancy for breach of a material term of the tenancy but she failed to provide the Tenant with a written breach letter identifying the problem and providing the Tenant an opportunity to correct the problem.

In addition there was insufficient evidence from the Landlord to establish that D.L. was an occupant of the rental unit, rather than a guest.

The 1 Month Notice to End Tenancy for Cause dated January 30, 2017, is cancelled.

I order the tenancy to continue until ended in accordance with the Act.

### Conclusion

The Tenant's application to cancel the 1 Month Notice to End Tenancy is successful. The 1 Month Notice to End Tenancy for Cause dated January 30, 2017, is cancelled.

I order the tenancy to continue until ended in accordance with the Act.

The Tenant submitted that they are not seeking anything further with regard to the Application for Dispute Resolution. Therefore, I dismiss the request in the Application to allow access to or from the site.

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: March 10, 2017

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Residential Tenancy Branch