



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC AS OLC FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47;
- 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 the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony, to present evidence and to make submissions.

The tenants' application was filed within the time period required under the Act.

### Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord be ordered to comply with the Act and allow the tenants to assign or sublet the rental unit?

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy began on July 1, 2016 with a current monthly rent of \$3400.00 payable on the 1<sup>st</sup> day of each month.

The landlord served the tenant with a 1 Month Notice on February 24, 2017 on the grounds that the tenants assigned or sublet the rental unit without the landlord's consent.

The landlord submits the tenants were subletting the rental unit through AirBnB without any consent from the landlord. The landlord submits the Act does not permit tenants to assign or sublet without the landlord's consent and the onus of proof should be on the tenants to establish consent.

The tenant argues that there was a verbal agreement between the parties at the beginning of the tenancy by which the tenants were permitted to use the rental unit as an AirBnB. The tenant submits they were permitted to sub-lease in order to help make the rent payments. The tenant submits they even installed a kitchenette in the basement for the purpose of the AirBnB which the landlord was aware of. The tenant submits there was an addendum to the tenancy agreement which permitted them to do anything except for a "grow op". The tenant submits he has not been provided a copy of this addendum so was unable to provide it as evidence.

The landlord denied any such addendum or providing consent to operate an AirBnB.

The tenant further testified that he has been using the entire house for the purposes of the AirBnB and has even rented out the entire house on occasions when he is out of the country for work or travel purposes. The tenant testified that due to the nature of his work, he travels frequently to Japan. The tenant testified that he has had up to a maximum of 13 guests in the house as part of the AirBnB. The tenant acknowledged the alleged addendum he referred to only stated that a grow-op was not permitted and made no specific reference to assigning or subletting the rental unit.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, the landlord issued the 1 Month Notice pursuant to paragraph 47(1)(i) of the Act, which permits a landlord to terminate a tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without consent from the landlord.

Residential Tenancy Policy Guideline #19 Assignment & Sublet provides guidance as follows:

### **B. ASSIGNMENT**

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

### **C. SUBLETTING**

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.

### **Use of rental property for travel/vacation accommodation**

...However, there have been dispute resolution proceedings arising from tenants who have rented out all or part of their rental unit via AirBnB or other vacation/rental listing services and their landlord has issued a One Month Notice to End Tenancy (form RTB-33) for the tenant's failure to obtain the landlord's written consent to sublet. As stated above within section C, unless the tenant is acting as an agent for the landlord or has moved out of the unit, this is not a true sublet under the RTA. It is unlikely that a One Month Notice to End Tenancy (form RTB-33) for cause for the tenant's failure to obtain the landlord's written consent to sublet would be successful in these circumstances, although this type of action by a tenant may constitute other breaches of the Act or tenancy agreement for which the landlord might issue a One Month Notice to End Tenancy (form RTB-33).

I find the case at hand to be distinguishable from the illustration on the policy guideline as the tenants own testimony was that he frequently rented out the entire house while out of the country for travel or work purposes. Although the tenants may not have "moved out" of the rental unit during these periods, I find the tenants did temporarily vacate the rental unit granting exclusive occupancy to AirBnB guests. As such, I find this arrangement to be a true sublet as contemplated under the Act.

I find the tenants did not have written consent of the landlord to sublet the rental unit. The tenant was not able to provide the addendum to the lease agreement by which he argues the landlord provided consent to use the rental unit for AirBnB. The landlord denied the existence of any addendum and in either event, the tenants own testimony

confirms the alleged addendum did not specifically reference subletting the rental unit. I further find that the tenants have provided insufficient evidence to support there was a verbal agreement for the tenants to be able to sublet or that the landlord provided implied consent.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the 1 Month Notice on the grounds that the tenants assigned or sublet the rental unit without the landlord's written consent.

The tenants' application to cancel the 1 Month Notice to End Tenancy is dismissed. The tenants' application for the landlord to comply with the Act or to allow the tenants to assign or sublet the rental unit is also dismissed.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 29, 2017

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Residential Tenancy Branch