



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAYFAIR PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNC, OLC, FF

### Introduction

This hearing was scheduled to address the Tenant's application to cancel a 1 Month Notice to End Tenancy issued by the Landlord. Both parties appeared at the hearing and testified that they received each other's evidence. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

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

- Does the Landlord have cause to end the tenancy?
- Should the notice to end tenancy be cancelled?

### Background and Evidence

The Landlords and Tenant testified that the tenancy began on May 1, 2014. Rent in the amount of \$1,639.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$777.50.

The rental building has a front desk as it contains hotel units and contains residential units. Floors 5 to 21 contain the rental units. Hotel occupants and Tenants share the elevator.

The Landlord testified that he has received complaints from the hotel front desk staff and other Tenants regarding strangers or transient people coming and going from the building. The Landlord testified that the Tenant is running an Air Bed and breakfast ("Air BNB") business from his rental unit.

The Landlord provided a copy of an email message received from another occupant of the building that indicates the occupant has constantly seen different people coming and going at all hours from the Tenant's unit for the past year.

The Landlord provided a copy of an email dated March 23, 2016, regarding an incident where a person entered the hotel and stated he had rented a room on Air BNB from the Tenant, but is locked out and cannot reach the Tenant.

The Landlord provided an advertisement on Air BNB offering to rent a room. The advertisement shows a photograph of the Tenant and is advertised under the Tenant's first name 'J'.

On March 25, 2016, The Landlord issued a caution notice to the Tenant that indicates the Tenant has failed to comply with a material term of the tenancy. The Landlord provided a copy of the caution notice. The caution notice states the Tenant is in breach of a material term of the tenancy agreement and states that using the apartment for a business purpose is a breach of the contract to be corrected immediately.

The Landlord testified that on January 2, 2017, he observed two strangers who looked like tourists enter the Tenant's apartment. The Landlord testified that he checked the internet and located another advertisement for the Tenant's unit on Air BNB. The Landlord testified that in the advertisement the Tenant has changed his name to "G". The new advertisement also contains the Tenant's photograph. The Landlord provided a copy of the advertisement. The Landlord provided screenshots that indicate the unit was able to be booked for April 29, 2017. The screenshots also provide comments made from guests in April, July, and August 2016.

The Landlord also testified that he has received numerous complaints about the Tenant making noise and disturbing other occupants. The Landlord referred to documents he provided regarding noise disturbances caused by the Tenant in January and February 2017.

The Landlord testified that he sent text messages to the Tenant to notify him of the complaints. The Landlord testified that they regularly communicated using text messaging.

The Landlord provided a copy of the tenancy agreement. The agreement contains a clause that states that the Tenant will comply with provisions of the bylaws and the rules and regulations of the strata corporation.

The Landlord provided a copy of a bylaw agreement between the parties signed on March 2, 2014. The agreement between the parties includes a term regarding subletting and occupants. The agreement states that subletting the unit is prohibited and is a material term of the tenancy

agreement. The term states that only tenants on the tenancy agreement may live in the unit unless with the written consent of the Landlord. .

The Landlord testified that due to the Tenant's continued breach of the tenancy agreement, and due to the noise complaints, the Landlord issued the 1 Month Notice to End Tenancy for Cause.

#### 1 Month Notice to End Tenancy for Cause

On March 6, 2017, the Landlord served a 1 Month Notice to End Tenancy for Cause (the Notice) to the Tenant. The Notice indicates the following reason for ending the tenancy:

*Tenant or a person permitted on the property by the Tenant has:*

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*

*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 or the Landlord*

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

*Tenant has assigned or sublet the rental unit/ site without the Landlord's written consent.*

The 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. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of the Notice.

The Tenant testified that he received the Notice on March 8 or 9th. The Tenant disputed the Notice within the required timeframe.

In response to the Landlord's testimony, the Tenant testified that he did rent his unit out to people on Air BNB because he was not aware that it was not permitted. He testified that he stopped after he received the caution notice on his door, he had a conversation with the Landlord and was informed that renting his unit out was not permitted.

The Tenant testified that since being informed the renting the unit on Air BNB is not permitted, he has not used Air BNB. He testified that he never removed the advertisement from Air BNB.

The Tenant provided a copy of an email response dated March 30, 2017, from a case manager from Air BNB that states the Tenant has not hosted with Air BNB for 7 months. The Tenant testified that he only has one Air BNB account.

The Tenant testified that he now allows people to stay with him for no cost, and advertises on a couch surfing website. He testified that the people who were observed coming and going were his guests from the couch surfing website. He testified that he has these guests approximately once or twice per month. He testified that he offers the couch surfing because he likes to be around people from other cultures.

The Tenant testified that he is always in town when he has the guests from the couch surfing site.

In response to the question of why he changed his Air BNB advertisement after receiving the caution letter, the Tenant testified that he goes by "J" or "G" and every so often he changes his name. He testified that he uses the account when he travels.

In response to the Noise complaints, the Tenant testified that the noise could be coming from any apartment. The Tenant submitted that the units are prone to noise and have laminate flooring.

The Tenant submitted that he had knee surgery and had to use crutches for a period. The Tenant provided a doctor's letter dated May 24, 2016, to corroborate his testimony.

The Tenant testified that he never received the text messages that the Landlord sent to him regarding the noise complaints. He testified that he asked the Landlord to stop sending him messages by text. He testified that he only received one written complaint taped to his door.

In response, the Landlord J.T. submitted that a person does not need to have an advertisement in order to use the Air BNB service.

### Analysis

The Residential Tenancy Policy Guideline #8 Unconscionable and Material Terms states:

*A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities I make the following findings:

I find that the Tenant agreed to abide by the bylaws and rules of the strata corporation and the bylaws contain a term that subletting and occupants is material term of the tenancy.

While I accept the Tenant's explanation that he was initially not aware that Air BNB rentals were not allowed, I find that the Tenant was made fully aware that this activity is a breach of a material term of the tenancy agreement.

I find that the Tenant's evidence regarding continued use of the Air BNB lacks credibility. The Tenant testified that after receiving the caution letter he stopped using Air BNB. I find that it makes no sense that after receiving the caution letter, the Tenant would change his name to "G" on the advertisement rather than removing the advertisement. There would be no value in changing his contact name.

I find that the advertisement was still active and allowed a booking for April 29, 2017. It makes no sense that the Tenant would keep the advertisement active and allow people to book the unit, if he was not going to honor the booking. Furthermore, there is evidence of testimonials from guests that are dated after the date the Tenant received the caution letter which suggests to me the Tenant continued to use the Air BNB service.

The Tenant was using a couch surfing website and formally offering shelter to strangers for free, in conjunction with an active Air BNB advertisement.

I prefer the Landlord's evidence that the Tenant was still operating an Air BNB and has breached a material term of the tenancy agreement.

I find that the Landlord has proven that there are grounds to end the tenancy for a breach of a material term of the tenancy agreement regarding the Tenants use and occupancy of the rental unit. The tenancy is ending.

Since the tenancy is ending due to a breach of a material term of the tenancy, I find it is not necessary to consider the allegations that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord.

I dismiss the Tenant's Application to cancel the 1 Month Notice to End Tenancy for Cause dated March 6, 2017. Under section 55 of the Act, when a tenants application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act.

The 1 Month Notice has an effective date of April 30, 2017. I grant the Landlord an order of possession effective no later than 1:00 pm on April 30, 2017, after service on the Tenant.

Conclusion

The Tenant has breached a material term of the tenancy. The tenancy is ending.

The Landlord is granted an order of possession effective no later than 1:00 pm on April 30, 2017, after service on the Tenant.

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: April 21, 2017

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Residential Tenancy Branch