



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

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

- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; 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. The tenant acknowledged receiving the landlords' documentary evidence. The tenant did not submit any documentation for this hearing.

### Preliminary Issue

The tenant seeks an extension of time to make an application to cancel the landlords' notice to end tenancy. The tenant and his advocate were silent on this point and made no submissions. Based on the insufficient reasons before me, I deny the tenants request for a time extension. The hearing proceeded and completed in its entirety on this date.

### Issues to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy for Cause set aside? If not is the landlord entitled to an Order of Possession?

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

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about June 15, 2013. Rent in the amount of \$1520.00 is payable in advance on the first day of each month. The landlord testified that they issued a One Month Notice to End Tenancy for Cause on April 21, 2017 on the basis that the tenant had an unreasonable amount of occupants living in his unit and that the tenant breached a material term of his tenancy. The landlord testified that the unit is rented out on the basis of a person's income and their rent is geared in relation to it. The landlord testified that the tenant took on a roommate without the landlords consent or the tenant making an application to add a roommate to the landlord.

The landlord testified that the tenant advised them the female that was attending to the subject unit was his caregiver however, over time the tenant referred to her as his girlfriend. The landlord testified that they requested proof that the caregiver was not living there but were dissatisfied with the tenants' proof. The landlord testified that by taking his girlfriend on as a roommate may affect his ability to qualify for the unit and is a direct contravention of the addendum to the tenancy agreement. The landlord testified that they seek an order of possession.

The tenant gave the following testimony. The tenant testified that the caregiver was hired to take care of him and his health issues. The tenant testified that over time they began a relationship and that she is his girlfriend now, but, does not live in the unit. The tenant testified that she lives in Revelstoke and that she attends between 5-8 days a month to assist him. The tenant testified that he spends more than fifty percent of his time in Revelstoke with her. The tenant testified that there is no requirement for him to provide proof of residency for any of his guests but he has done so, but to no avail. The tenant testified that he is entitled to have her stay over occasionally and that he has not breached any terms of the tenancy.

### Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlord submits that the tenant has breached a material term of the tenancy by having his girlfriend move in with him. The tenant gave a clear, concise and compelling explanation as to his relationship, the amount of times his girlfriend stays and assists him, the duties she undertakes when she is in Vancouver and the reason why his girlfriend has a

Revelstoke address. Based on all of the above, I find that the landlord has not provided sufficient evidence to show that the tenant has taken in a roommate and therefore has not breached a material term of his tenancy agreement. The notice to end tenancy is set aside.

As the tenant has been successful in this application, he is entitled to the recovery of the filing fee. I order that the tenant is entitled to a one time rent reduction of \$100.00 from the August 2017 rent due in full satisfaction of that claim.

### Conclusion

The One Month Notice to End Tenancy for Cause dated April 21, 2017 with an effective date of June 1, 2017 is of no effect and 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: July 17, 2017

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Residential Tenancy Branch