



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CREIGHTON& ASSOCIATES REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes          OPC, CNC, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- an Order of Possession for Cause pursuant to section 55.

The tenant applied for:

- an cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47; and
- recovery of the filing fees of 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 affirmed testimony, to make submissions, and to call witnesses. The corporate landlord was represented by its agent SC (the “landlord”).

As both parties were in attendance I confirmed that there were no issues with service. The landlord confirmed receipt of the tenant's application for dispute resolution. The tenant confirmed receipt of the 1 Month Notice, the landlord's application for dispute resolution and evidentiary materials. The tenant testified that he had not submitted any evidence. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 1 Month Notice, the respective applications and their evidence.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

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

### Background and Evidence

This periodic tenancy began in June, 2016. The monthly rent is \$1,425.00. The written tenancy agreement signed by the parties includes a clause prohibiting the tenant from short-term rentals, specifically AirBnB.

The landlord testified that they received an email from an unknown sender reporting that the rental unit was being listed on the AirBnB site. The landlord said that he recognized the tenant in one of the photographs on the site. A copy of that photograph was provided into written evidence. The landlord submitted letters from other employees of the corporate landlord attesting to the fact that they viewed the listing.

The tenant testified that he has not listed the rental unit on AirBnB or any short-term rental site. The tenant's witness, who is a neighbor, testified that she and the tenant work on group projects with a number other individuals attending at the rental unit. She said that it is possible that the partners for group projects were mistaken for AirBnB patrons.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that there is a breach of a material term of the tenancy and that the tenant has sub-let the rental unit without the permission of the landlord.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. The landlord has submitted insufficient evidence to show that the tenant has listed the property on AirBnB. The materials submitted into written evidence consists of letters from employees of the corporate landlord saying they have viewed the listing and a single image of someone the landlord says is the tenant. I note that the image of the tenant appears to be taken outdoors and there is no indication that the photo was taken from the AirBnB site. If there was an online posting advertising the rental unit it is reasonable to expect that a print out of the page, a screen cap or some substantive evidence could be presented. The landlord's evidence consists of disputed testimony, a single inconclusive photograph and statements from other employees of the corporate landlord in support. I do not find that there is sufficient evidence to conclude that there has been a breach of the tenancy agreement to give rise to an end of the tenancy. Consequently, I allow the tenant's application and dismiss the 1 Month Notice.

As the tenant's application was successful, the tenant is entitled to recover the \$100.00 filing fee for this application.

### 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*.

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. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: August 10, 2017

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Residential Tenancy Branch