



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to section 47 of the *Residential Tenancy Act* ("Act").

The landlord's agent, the landlord's property manager and the tenant 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 landlord's agent S.M. (the landlord) stated that he would be the primary speaker for the landlord.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant testified that they served the Tenant's Application for Dispute Resolution (the Application) to the landlord by leaving it with an agent of the landlord on September 22, 2017. The landlord confirmed that they received the Application. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The tenant confirmed that they did not submit any evidence.

The landlord testified that they personally served the tenant with their evidence on November 06, 2017. The tenant confirmed that they received this evidence. In accordance with section 88 of the *Act* I find the tenant is duly served with the landlord's evidence.

The landlord testified that the One Month Notice was posted to the tenant's door on September 11, 2017. The tenant confirmed that they received the One Month Notice on this date. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice on September 11, 2017.

The One Month Notice was not provided at the time of the hearing. I instructed the landlord to provide the One Month Notice to the Residential Tenancy Branch by the end of the next business day after the date of the hearing. As service of the One Month Notice to the tenant is the reason that the tenant filed the Application for this hearing, I find that the tenant is not prejudiced in accepting the One Month Notice as late evidence.

The landlord did submit a copy of the One Month Notice by the deadline noted above. As such, I have considered this documentary evidence.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this tenancy commenced on October 11, 2011, with a monthly rent of \$1,176.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$588.00. The landlord testified that the monthly rent has been increased to \$1,418.00 since the beginning of the tenancy, which the tenant confirmed is true.

A copy of the landlord's September 11, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by October 31, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

*Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;*

*Tenant has engaged in illegal activity that has or is likely to seriously jeopardize a lawful right of another occupant or the landlord;*

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

The landlord submitted a copy of a letter from the city that the tenant's rental unit is located in (the City) sent to the landlord dated September 06, 2017, notifying the landlord of an unlawful short term rental for a rental unit, that is not the tenant's rental

unit. The letter states that the landlord has 14 days to correct the situation and failure to comply may result in fines and legal action.

The landlord testified that they have had a few complaints from other occupants and a letter from the City that the rental unit is being used for nightly rentals. The landlord stated that the City admitted to the landlord that they made a mistake on the letter and put the wrong unit number on it. The landlord further testified that the significant risk to the landlord's property is being fined by the City if the short term rental situation is not corrected. The landlord stated that they have had many conversations with the tenant over the last few months and that any roommates should be approved by the landlord.

The tenant testified that they are apologetic for the situation. The tenant stated that they have been living in the rental unit for six years and have never been introduced to the property manager although she tried to contact her to propose a solution and resolve the misunderstanding. The tenant testified that she closed her account for short term rentals on September 11, 2017, immediately upon receiving the One Month Notice. The tenant submitted that they have always remained in their rental unit and were only renting out a room in the unit.

The property manager testified that they do not believe she is sleeping in the unit when renting it out.

### Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. This section 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 the grounds for the One Month Notice. As the tenant disputed this notice on September 17, 2017, and since I have found that the One Month Notice was served to the tenant on September 11, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find the landlord bears the burden of demonstrating, on a balance of probabilities, that the tenant has assigned or sublet the rental unit without the landlord's consent, put the property at significant risk and engaged in illegal activity that seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The definition of what constitutes a sublet is very narrow and is contained in *Residential Tenancy Policy Guideline #19*;

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.

The use of the word ‘sublet’ can cause confusion because under the Act it refers to the situations where the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant. ‘Sublet’ is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the Act, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship, as described above. If there is a landlord/tenant relationship, the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply.

I find that the landlord has not provided sufficient evidence to demonstrate that a subletting agreement had been entered into between the tenant and a third party. I find that, although third parties rented out a space in the rental unit from the tenant, no evidence was presented by the landlord that the tenant entered into a tenancy agreement with the third party and that they had a landlord/tenant relationship. I note that section 4 of the *Act* specifically exempts living accommodation occupied as vacation or travel accommodation from the jurisdiction of the *Act*.

While it is not before me, I caution that the tenant may have breached other terms of the tenancy agreement. However, there is no evidence before me that, once the landlord identified that they thought the tenant was subletting, they discussed this with her or warned her that her tenancy might be in jeopardy prior to issuing the One Month Notice.

While there is no requirement to provide such a discussion or warning when ending the tenancy for subletting or unless the tenant has breached a material

term of the tenancy agreement, I am satisfied that once the tenant was made aware it was a problem she stopped renting her to short term renters.

I further find that the landlord has not provided sufficient evidence to prove that the tenant has put the property at significant risk or engaged in illegal activity which jeopardized a lawful right of another occupant or the landlord. I find that the only evidence that the landlord provided is for a rental unit that is not the tenant's rental unit. If the letter from the City was actually intended for the rental unit in question as the landlord asserts, the City's letter gave the landlord 14 days to correct the situation. I find that, based on the affirmed testimony of the tenant, once the tenant was made aware of the issue it was corrected immediately and the landlord's property was never at significant risk of being fined. I find that the landlord has not provided any evidence that the tenant was not in the rental unit at the same time as her short term renters and has engaged in illegal activity which jeopardized a lawful right of the landlord.

Based on the evidence and affirmed testimony from all parties, I find the landlord has insufficient grounds to issue the One Month Notice and to end this tenancy for cause.

For this reason the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*.

### Conclusion

The tenant is successful in their Application.

The One Month Notice is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

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: November 24, 2017

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Residential Tenancy Branch