



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a One Month Notice to End the Tenancy for cause dated September 4, 2017 to be effective October 8, 2017 by posting it on his door on September 4, 2017. The tenant said they served the landlord with their Application for Dispute dated September 15, 2017 by posting it on the door as they were not home. I find the Notice to End Tenancy was legally served pursuant to section 88 of the Act but the tenant did not legally serve his Application according to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act)

- a) to cancel the Notice to End Tenancy
- b) to suspend and set limits on the landlord's entry into their unit;
- c) to change the locks; and
- d) for the landlord to comply with the Act.

### **Issues:**

Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on November 1, 2016, rent is \$580 a month and a security deposit of \$290 was paid. The landlord provided evidence that the tenant was late in paying rent in February and March 2017.

The landlord testified that he is ending this tenancy for cause as stated in the Notice to End Tenancy. He said the tenant has moved in large numbers of subletting tenants since the lease began. He said that he expected the tenant to share the unit with maybe one related person, like a friend, when he signed the lease that said under the rental amount "pays \$500 if can't find another tenant". However, the tenant currently has 4 people staying there and at times has had more and divided the rooms with curtains to make cubicles for individuals. A letter from a subtenant in evidence states

that in one year, the tenant has sublet to 6 individuals including him for short periods of time. He states there have been no less than 7 individuals including the tenant living in the suite for the past year. Another subtenant states it is a 2 bedroom suite but since he or she has lived there, there have been always 3 or more tenants. As of September 2017, there are 4 male adult tenants and the tenant has divided up the living room space with a curtain as 'pseudo separate bedrooms'.

The landlord also provided evidence of the significant interference with their reasonable enjoyment. They noted two police incidents, one in December 2016, when one of the tenant's subtenants was fighting with the tenant and brandishing a knife. The Police attended with dogs and guns and put handcuffs on the landlord because they thought he was the subtenant. The landlord who is elderly has problems with English and found this very humiliating and distressful. The second incident was in August 2017 when a moving truck pulled up to the house and the landlord went out to query what was happening. The tenant had arranged to rent to a student from another province and his parents were with him. The landlord tried to explain the situation to them. The parents were upset as the tenant was charging \$900 rent for accommodation that appeared to be unauthorized by the landlord. An argument ensued as they tried to retrieve their money and the police were called by a neighbour. After talking with the parties, the landlord said they advised he should have the tenant removed.

The landlord, his wife and mother are all elderly and they say this has significantly affected their health. Two letters are enclosed from doctors regarding the significant impact of this tenancy on the wife's health.

Two neighbours wrote letters describing the situation as they observed it. One describes the two police incidents and said it is disturbing to the neighbours to constantly have new tenants coming and going that are not properly screened by the owners. The second neighbour notes the physical distress that the tenant's actions are causing. She notes the tenant is using the basement suite like a hotel.

The tenant says he did not forge the tenancy agreement or agreement to sublet as the landlord alleges. He said the suite has 3 bedrooms and the 4 people there now are peaceful. He pointed out that the neighbours' letters are based on what the landlord told them and they don't know the situation themselves. He agreed people come and go but says he is screening them. Before the present 4 subtenants, he said he had 3 more but not all at the same time. He said the subtenant who brandished a knife was a friend of the landlord and the landlord had told him not to pay rent to him. The landlord denies this.

The landlord said the tenant had put in items in the lease such as expiring in 2021 which he did not understand or agree to. It was a 6 month lease as stated. Furthermore, he did not consent to sublet; the tenant forged his signature. The tenant denies this.

**Analysis:**

The Notice to End a Residential Tenancy is based on cause. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes it. I find the tenant filed an application to dispute the Notice but did not serve it legally on the landlord. Although his Application might be dismissed for lack of legal service, I find it was sufficiently served pursuant to section 71 (1) (b) for the purposes of this hearing since the landlord and his agent both received the notice and attended the hearing.

Section 47 of the Act sets out causes, any one of which if proven, is sufficient to end the tenancy. The onus is on the landlord to prove on the balance of probabilities there is good cause to end the tenancy. I find the landlord satisfied the onus. I find the weight of the evidence is that the tenant or a person permitted on the property by the tenant has significantly interfered with and unreasonably disturbed the landlord and his neighbours and he has seriously jeopardized the health, safety or lawful right of the landlord. I find the letters from his subtenants persuasive that he is renting the suite out "like a hotel" by allowing multiple parties to live there for short periods of time and even dividing up the living room by curtains into cubicles for bedrooms. Although the landlord may have consented to him subletting, I find it most unlikely that the landlord consented to this kind of arrangement. I find the landlord's evidence most credible that he believed he was consenting for the tenant to share with one other person. I find the landlord's credibility is supported by the lease term that provides the tenant's rent would be reduced by \$50 a month if he could not find another tenant. I find the tenant's behaviour in disputing his right to have multiple parties renting in the unit significantly interfered with and unreasonably disturbed the landlord and his neighbours who observed the Police presence and had to call the police during on incident.

I find the tenant's behaviour and that of his subtenant who brandished a knife seriously jeopardized the health, safety and rights of the landlord. I find the doctors' letters persuasive that the female landlord's health is suffering and I find the male landlord's evidence credible that he was significantly stressed by the police episode where they mistakenly handcuffed him. I find insufficient evidence to support the tenant's allegation that the subtenant brandishing the knife was a friend of the landlord and the landlord

denies this. I find this incident was the result of a dispute between the tenant and one of his subtenants and it significantly jeopardized the health, safety and rights of the landlord. I dismiss the application of the tenant to set aside and cancel the Notice to End Tenancy. The tenancy is at an end. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective December 7, 2017 as the landlord suggested.

Regarding the claims of forgery, I decline to make a finding. However, I find the lease is contradictory in its terms as it says it is for "sixth months" and then states the expiry date is November 1, 2021. However this is not relevant to the Decision and Order.

In respect to the tenant's other requests, I find it is moot at this point to authorize a change of locks or to set conditions on the landlord's right to enter the rental unit as the tenancy is ending. Furthermore, I find insufficient evidence that the landlord has violated the Act or the rights of the tenant.

**Conclusion:**

I grant the landlord an Order for Possession effective December 7, 2017. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I advise the landlord to look on the Residential Tenancy Branch website, "How to Enforce an Order of Possession" for instructions. I dismiss the tenant's application without recovery of the filing fee.

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 23, 2017

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Residential Tenancy Branch