



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

This decision pertains to the Tenant's application for dispute resolution made on May 7, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks the following:

1. an order to cancel a One Month Notice to End Tenancy for Cause (the "Notice");
2. an order for the Landlord to comply with the Act, regulation, or the tenancy agreement; and,
3. a monetary order for recovery of the filing fee.

The Tenant and the Landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Tenant's daughter, E.K., attended as a witness.

The parties did not raise any issues with respect to service of documents and evidence.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

### Issues to be Decided

1. Is the Tenant entitled to an order to cancel the Notice?
2. Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation, or the tenancy agreement?
3. Is the Tenant entitled to a monetary order for recovery of the filing fee?

## Background and Evidence

This dispute concerns the issuing of the Notice, and regarding the Landlord's request that the Tenant purchase commercial insurance. The rental unit is a three storey, multi-unit building with 3 separate rental units, each with its own bathroom and kitchen. The Tenant rents the building from the Landlord and sublets the 3 rental units. One of the rental units is sublet to the Tenant's daughter, E.K. The parties disagreed with whether the building was a single-family dwelling or a multi-family dwelling. The Landlord submitted that it was a single-family dwelling; the Tenant submitted that it was a multi-family dwelling, and that it is zoned as such.

The Tenant entered into a written tenancy agreement (the "Agreement") with the Landlord on April 18, 2015. An addendum ("Addendum"), also dated April 18, 2015, to the Agreement states that "The apartment building has multiple apartments. The owner gives permission for the tenant to sublet the apartments and bedrooms." The Tenant submitted the Agreement and the Addendum into evidence.

The Landlord testified that they issued the Notice on April 29, 2018, with an effective date of May 31, 2018, based on two grounds: (1) the Tenant has allowed an unreasonable number of occupants in the unit/site; and, (2) the Tenant has assigned or sublet the rental unit/site without the Landlord's written consent.

The Landlord conducted an inspection of the building sometime in April, and testified that they "found a lot of people," and "more than ten people" in the building. The Landlord submitted that this is an unreasonable number of occupants in the rental unit.

The Landlord did not testify or make any submissions regarding the second ground on which the Notice was issued. However, the Landlord did testify that one of the reasons why they issued the Notice was to motivate the Tenant to acquire commercial insurance. The Landlord submitted that the Tenant was "running a business" in their home. Though the Landlord did not explicitly state or describe what that business is, I infer that they meant the Tenant's "business" of subletting the three rental units. The Landlord expressed concerns with risks, especially the risk of fire, associated with having many people live in the building. The Landlord testified that they simply want the Tenant to take "full responsibility" and obtain insurance.

The witness (E.K.) testified that the Tenant was not "running a business," but was merely subletting the rental units, as permitted by the Addendum. They testified that

they contacted at least eight insurance companies to obtain commercial insurance, but were unsuccessful. The insurance companies advised them that commercial insurance was not the appropriate policy for the sublet arrangement that exists. The insurance companies also advised that the individual tenants in the building could obtain tenant insurance, but that this would not protect the Landlord. The Landlord should, according to the Tenant, obtain their own insurance. The witness testified that the Tenant is willing to offer the Landlord funds to assist in paying for whatever insurance they need.

The witness further testified and submitted that, regardless of whatever arrangement the Tenant and Landlord may come to regarding insurance outside of the hearing, there is nothing in the Agreement requiring either the Tenant or the sublet tenants to obtain insurance.

The witness disputed that there are not ordinarily more than ten occupants in the building as the Landlord submits. The witness conceded that there may be this number of occupants when the various tenants have guests or friends over, but that in any event seven occupants currently residing in the building is not an unreasonable number.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

Subsection 47 (1) (c) allows a landlord to end a tenancy by giving notice to end the tenancy if there are “an unreasonable number of occupants in a rental unit.”

The rental unit consists of 3 rental units, which in total have 7 bedrooms. The Landlord submitted that “more than 10” occupants is unreasonable. The Landlord did not provide an exact number, and as such I cannot determine what an “unreasonable number” is if I do not have a number. The Tenant submitted that there are only 7 occupants residing in the building. I fail to see how 7 to 10 occupants is unreasonable in this building.

Taking into consideration all the evidence and testimony of the parties presented before

me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving, on a balance of probabilities, that the Tenant has allowed an unreasonable number of occupants in the rental unit.

Second, the Landlord did not provide any testimony or evidence regarding the second ground on which they issued the Notice, namely, that the Tenant has assigned or sublet the rental unit/site without the landlord's written consent. As such, and based on the Tenant's submission into evidence a copy of an Addendum which clearly permits subletting, I find that the Landlord has not met the onus of proving the second ground on which they issued the Notice.

Therefore, for the reasons outlined above, I find that the Landlord's Notice, dated April 29, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

I turn now to the Tenant's seeking of an order requiring the Landlord to comply with the Act, regulation, or the tenancy agreement. The Tenant seeks an order that prevents the Landlord from demanding that the Tenant obtain commercial insurance.

Based on the testimony of the parties, it does not appear to me that the Tenant would be able to obtain commercial insurance. While the Landlord may ask the Tenant to obtain commercial insurance, whether the Tenant obtained commercial insurance or not is not a ground on which the Landlord may end the tenancy. Nor is the Landlord asking the Tenant to obtain insurance in and of itself contrary to the Act, regulation or the Agreement. Any changes to the Agreement whereby insurance (of any type) is required by the Tenant would need to be made with the consent of both the Landlord and Tenant. I decline to issue an order requiring the Landlord to comply with the Act, regulation, or the tenancy agreement.

That said, I encourage the parties to continue their discussions regarding what, if any, insurance may be obtainable. The Tenant testified that they are willing to offer the Landlord funds to assist with rental or commercial insurance; the Landlord was silent on this offer during the hearing. The Landlord should seek advise from their insurer about the type of insurance they should carry on the property.

As the Tenant is partially successful with their application, I find that they are entitled to recover \$50.00 of the filing fee. The Tenant may make a one-time reduction in their next rent payment in the amount of \$50.00 in satisfaction of this award.

Conclusion

I allow the Tenant's application to cancel the Landlord's Notice. The Landlord's Notice, dated April 29, 2018, is cancelled and of no force or effect. The tenancy continues until it is ended in accordance with the Act.

I decline to issue an order requiring the Landlord to comply with the Act, regulation, or the tenancy agreement.

The Tenant is entitled to a monetary award of \$50.00, and they may make a one-time reduction in their next rent payment in the amount of \$50.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 18, 2018

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Residential Tenancy Branch