



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WHISTLER PREMIER RESORTS ULC  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNC FFT

### **Introduction**

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

- 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 the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

NF ("landlord") appeared on behalf of the landlord in this hearing, and had full authority to do so. 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 landlord's agents confirmed receipt of the tenant's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and evidence. The landlord did not submit any written evidence for this hearing.

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The tenant confirmed receipt of the 1 Month Notice, which was personally served to hm on May 31, 2018. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

### **Issues**

Should the landlord's 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?

### **Background and Evidence**

This month-to-month tenancy began on May 1, 2016, with monthly rent currently set at \$645.00 per month, payable on the first of each month. The landlord currently holds a security deposit of \$322.50. The tenant continues to reside in the rental suite.

The landlord issued a 1 Month Notice to End Tenancy on May 31, 2018, providing two grounds:

1. Tenant has allowed an unreasonable number of occupants in the unit/site; and
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord's agent testified in this hearing that this was a sublease, and that they were instructed by their landlord to issue the 1 Month Notice by their landlord as their landlord believes that the tenant has allowed another party to reside with him.

The landlord did not provide any written evidence in this hearing, nor was the landlord able to give testimony confirming that the tenant has allowed occupants in his unit/site, or that the tenant has continued to breach the material term of the tenancy agreement after receiving written notice to correct the situation. The tenant disputes the 1 Month Notice, stating that although his ex-girlfriend would visit from time to time, she had never resided there. The tenant provided written evidence to support that she did not live there.

### **Analysis**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the

other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

*To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In this case, the landlord's agent did not call any witnesses or provide any written evidence to support that the tenant breached a material term of the tenancy agreement, and did not correct his behaviour within a reasonable amount of time to do so. The landlord's agent was unable to give direct testimony as to whether the tenant did in fact breach a material term of the agreement, or continues to do so. Accordingly, I find that the landlord has not provided sufficient evidence to support that the tenancy should end on these grounds.

Similarly, the landlord indicated on the 1 Month Notice that the tenant had allowed an unreasonable number of occupants into his unit or site, and the landlord did not provide any written evidence, call any witnesses, nor was able to provide testimony to support this. On this basis, I find the landlord has not provided sufficient evidence to support that the tenancy should end on this ground.

For the reasons cited above, I allow the tenant's application to cancel the 1 Month Notice dated May 31, 2018. The tenancy will continue until ended in accordance with the Act.

As the filing fee is a discretionary award given to a successful party after a full hearing on its merits, I allow the tenant's application to recover the \$100.00 filing fee from the

landlord. The tenant may also choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

### Conclusion

The tenant's application to cancel the 1 Month Notice dated May 31, 2018 is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: July 18, 2018

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Residential Tenancy Branch