



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HSUS ENTERPRISES CO.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

On July 7, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing and A.H. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by putting it in the Landlord’s mailbox; however, she does not know when she did this. A.H. confirmed that she received the Notice of Hearing package sometime in July and that she was prepared to respond to it. Although the Notice of Hearing package was not served in accordance with Section 89 of the *Act*, as A.H. confirmed receipt of the package and was prepared to respond to the Application, I am satisfied that it is not prejudicial to proceed with the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

All parties agreed that the tenancy started on November 1, 2016 and that rent is currently \$1,500.00 per month, due on the first day of each month. A security deposit of \$750.00 was also paid.

All parties agreed that the Notice was served to the Tenant by being posted on her door on June 29, 2018 and the Tenant confirmed that she received the Notice on approximately July 2, 2018 as she had been away. The reason the Landlord served the Notice is because the “Tenant has assigned or sublet the rental unit/site without landlord’s written consent.” The Landlord indicated on the Notice that “We found out that this unit was rented through airbnb since September 2017.” The Landlord also wrote in the effective vacancy date of the Notice as July 31, 2018.

A.H. advised that she was informed by other tenants in the building that the Tenant had been renting the rental unit out on Airbnb. A.H. stated that she had found online ads for the rental unit and reviews on the Tenant’s Airbnb listing from September 2017 to May 2018. She indicated that the written tenancy agreement prohibits such rentals and the Tenant did not have written consent to do so. In November 2017, A.H. posted warning notices in communal areas advising Tenants to refraining from such behaviours. She also put these notices under each rental unit’s door. A.H. submitted that allowing people into the property creates a safety and security issue.

The Tenant stated that she did not see the warning notices. She advised that she was aware that sub-letting was not allowed; however, she did not realize that Airbnb was not allowed. She submitted that she was away from mid-May 2018 to June 22, 2018 and this was the only period of time that she rented out the rental unit on Airbnb. In this span of time, she stated that she re-rented the premises six times. She explained that the online reviews of the rental unit were actually for another listing that she has on Airbnb and did not pertain to the above rental unit.

### Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting].*

When reviewing the totality of the evidence before me, the undisputed evidence is that the Tenant re-rented the rental unit, privately on Airbnb, contrary to the written tenancy agreement and without the Landlord's written consent. While the Tenant does not agree that she re-rented on Airbnb starting in at least September 2017, the evidence before me is that the warning notices were displayed in November 2017. I do not find it reasonable that these warning notices would have been posted if the Tenant or someone else in the building had not been engaging in this activity around that timeframe. Furthermore, I do not find it reasonable that she did not observe any warning notices in the communal areas of the building.

Regardless, I am satisfied of the undisputed evidence of the Tenant's actions of re-renting her rental unit from at least May 2018 to June 2018, and that this behaviour was contrary to the Landlord's warning notices. I find these reasons provide a basis and justification for the Landlord ending this tenancy. As such, I dismiss the Tenant's Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession. As the Tenant has paid rent for September 2018, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on September 30, 2018**.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on September 30, 2018 after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 5, 2018

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Residential Tenancy Branch