



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GRACEWAY PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 20, 2018 ("1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord"), the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord company named in this application and that he had permission to speak on its behalf at this hearing. The tenant confirmed that her advocate had permission to speak on her behalf at this hearing. The landlord intended to call a witness but I determined that the witness's testimony was not required for this hearing, as it related to an irrelevant conversation that was already documented and submitted as evidence by the landlord. This hearing lasted approximately 28 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 1 Month Notice on August 21, 2018, by way of email. The landlord confirmed that he posted the notice to the tenant's door while she was out of town and he emailed her a copy as well. In accordance with section 71(2)(c) of the *Act*, I find that the tenant was sufficiently served with the landlord's 1 Month Notice on August 21, 2018, by way of email.

### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for cause?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions are reproduced here. The important and relevant aspects of the tenant's claims are set out below.

Both parties agreed to the following facts. This tenancy began on September 19, 2015. Monthly rent in the current amount of \$1,490.00 is payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord's 1 Month Notice indicates an effective move-out date of September 30, 2018. The landlord issued the notice for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
  - *put the landlord's property at significant risk.*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
  - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*
- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The tenant seeks to cancel the 1 Month Notice and to recover the \$100.00 application filing fee. The landlord seeks an order of possession based on the 1 Month Notice.

The landlord testified that the tenant listed the rental unit on the Airbnb website. He claimed that she has been advertising on there and renting it out since 2016. He said that he found the most recent listing online himself. He claimed that this was a breach of the tenant's tenancy agreement. He stated that the tenant is not permitted to assign or sublet the rental unit without the landlord's written consent. He explained that the landlord management made a decision that there would be no Airbnb or short term rentals at the rental building because there were complaints about strangers coming in and out of the rental building. He maintained that he had no proof that the tenant sublet or used the rental unit for Airbnb or short-term rental purposes.

The tenant's advocate testified that the tenant posted one advertisement on Airbnb but this was not a breach of the tenancy agreement. She stated that the tenant asked the landlord for permission by email in order to rent out the unit to someone through Airbnb while she was on

vacation. She claimed that when the landlord denied permission, the tenant cancelled the booking that she made with someone, provided a refund and did not allow that person to stay at the rental unit. The tenant provided documentary proof of same. The tenant's advocate claimed that the tenant has been an active member of Airbnb since 2016 for her own personal purposes because she stays at these places since she travels so often. The tenant explained that she has not rented out the rental unit to anyone from Airbnb or anywhere else for short term rentals or otherwise. She stated that she has a security camera two feet in front of her rental unit. The tenant's advocate confirmed that she checked on the tenant's rental unit while the tenant was away on vacation. She stated that she also lives on the ground floor of the same rental building and the tenant had a vehicle break-in in 2016, so the tenant was concerned about the same thing occurring in her rental unit and she wanted her advocate to check in on her unit while she was away.

### Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on August 21, 2018 and filed her application to dispute it on August 24, 2018. Accordingly, I find that the tenant's application was filed within the ten day time limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

On a balance of probabilities and for the reasons stated below, I find that the landlord did not issue the 1 Month Notice for valid reasons.

I find that the landlord failed to prove that the tenant engaged in any kind of illegal activity. The landlord agreed during the hearing that the tenant was not charged with or convicted of any illegal activities or crimes.

I find that the landlord failed to prove that the tenant assigned or sublet her rental unit without the landlord's written consent. I also find that the landlord failed to prove that the tenant put the landlord's property at significant risk. The landlord agreed that he had no proof that the tenant rented out her unit to anyone else through Airbnb, for short-term rentals or otherwise. The tenant testified that she did not rent her unit out to anyone through Airbnb, for short term rentals or otherwise. The tenant cancelled the one booking she made with someone through Airbnb, after the landlord told her that she could not rent the unit out to anyone through Airbnb. She provided documentary proof of the booking, the cancellation and the refund; the landlord did not dispute these documents. The tenant's advocate testified that she checked the tenant's rental unit while she was away on vacation to make sure everything was okay and there were no break-ins. The tenant's advocate clarified that the tenant had an active account since 2016 on Airbnb because she travelled a lot and rented out places herself while travelling; the landlord

failed to provide proof that the tenant made any bookings for her rental unit through Airbnb since 2016.

Accordingly, I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice, dated August 20, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord. I order the tenant to deduct \$100.00 from her future monthly rent due to the landlord at the rental unit, in full satisfaction of the award for the application filing fee.

### Conclusion

The landlord's 1 Month Notice, dated August 20, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from her future monthly rent due to the landlord at the rental unit, in full satisfaction of the award for the application 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: September 27, 2018

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Residential Tenancy Branch