



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, RP, LRE, AAT, FFT

### Introduction

This hearing dealt with the tenants' application pursuant 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

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.

### Preliminary Issues - Service of Documents

As Tenant BEA (the tenant) confirmed that they received the 1 Month Notice posted on their door by the landlord on July 20, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

The tenant first testified that they sent the landlord a copy of the tenants' dispute resolution hearing package by email on August 6, 2018. The landlord testified that he never received the tenants' dispute resolution hearing package from the tenants. The landlord testified that he learned of the tenants' application when he contacted the

Residential Tenancy Branch (the RTB) on August 18, 2018, where he obtained a copy of the Notice of Hearing and the tenants' application for dispute resolution. The tenant then corrected his earlier testimony, saying that he sent the landlord a copy of the dispute resolution hearing package to the landlord by email on August 18, 2018. The tenant testified that he did not provide the landlord with copies of the tenants' written evidence.

The landlord testified that he sent copies of the landlord's written evidence to the tenants by registered mail to their rental unit on August 23, 2018. The landlord read into the record the Canada Post Tracking Number for this registered mailing. He testified that Canada Post's Online Tracking System revealed that a signature was obtained from an NS at the rental unit who accepted the registered mail on August 24, 2018. The tenant testified that he has been out of the country since early August and has not received the landlord's written evidence. I find that the landlord's written evidence was deemed served to the tenants in accordance with sections 88 and 90 of the *Act*, on August 28, 2018, the fifth day after their registered mailing.

Section 89(1) of the *Act* does not allow for the service of an application for dispute resolution by email. Even though the landlord has not received the tenants' dispute resolution hearing package from the tenants and was not served with that package in accordance with the *Act*, the landlord said that he wanted to proceed with the hearing of the tenants' application as he wanted the tenants' application to cancel the 1 Month Notice dismissed so that an Order of Possession could be issued to the landlord. The landlord testified that he had received a copy of the tenants' dispute resolution hearing package from the RTB and was familiar enough with the tenants' application to have enabled him to present written evidence to the tenants and to provide sworn testimony at this hearing. Under these circumstances and in accordance with paragraph 71(2)(c) of the *Act*, I find that the tenants' application to cancel the landlord's 1 Month Notice, although not served in accordance with section 89(1) of the *Act*, has been sufficiently served for the purposes of the *Act*.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

On April 13, 2017, the parties signed a one year- fixed term tenancy agreement that was to cover the period of occupancy from May 1, 2017 until April 30, 2018. When the initial term expired and no new tenancy agreement was signed, the tenancy automatically converted to a month-to-month tenancy. Monthly rent is set at \$1,595.00, payable in advance by the first of each month. The landlord continues to hold the tenants' \$797.50 security deposit paid on April 13, 2017.

The landlord testified that in mid-July 2018, the landlord became aware that the tenant was renting out this entire suite in a strata building to AirBnB home share customers. As entered into written evidence by the landlord, renting to short term customers was specifically forbidden in section 5(j) of the Addendum to the tenancy agreement the tenants signed. The landlord also entered into written evidence a copy of Form K, which the tenants also signed when this tenancy began. This document required the tenants to abide by the Strata Council's Rules, which also prevented the premises from being used for short term rentals such as by way of AirBnB. It also committed the tenants to pay any fines imposed by the Strata Council in the event that these Rules were not followed and fines were issued against the owner of the strata unit.

On July 18, 2018, the landlord contacted the tenant to arrange a meeting to advise the tenants that they could not use the rental suite for short term rentals such as AirBnB. On July 19, 2018, the landlord met with the tenant and with the tenant's witness at this hearing who had been helping the tenant arrange for AirBnB rentals and acted as the tenant's on-site manager of the relationship with AirBnB renters. At that meeting, the parties agreed that the tenant admitted to using the rental unit for short term AirBnB rentals. At that time, the landlord advised the tenant and his witness at this hearing that such rentals were contrary to the Addendum to their tenancy agreement which contravened the Strata's Rules and which exposed the tenants and the landlord to fines from the Strata Council.

Once the tenant admitted to using the rental suite for an AirBnB short term rental and refused to commit to ending this activity, the landlord issued a 1 Month Notice to the tenants. The parties entered into written evidence a copy of the 1 Month Notice, which sought an end this tenancy by August 20, 2018, for the following reason:

*Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

As mentioned at the hearing, the corrected effective date for the 1 Month Notice was August 31, 2018. Since the landlord has accepted rent from the tenant for September 2018, the earliest possible date when an Order of Possession could be issued would be September 30, 2018, the last day when the tenant's September 2018 rent payment would allow the tenants to remain in the rental unit.

The tenant initially testified that he only rented out his rental unit to AirBnB customers twice. When the landlord raised concerns about this, the tenant said that he closed down the AirBnB rental website and took down the advertisements for this rental unit two days later. At that point in the hearing, the tenant gave sworn testimony that he had not relisted the rental suite on AirBnB. Later in the hearing, the tenant testified that he had listed the rental unit on AirBnB on two occasions, when he was out of the country for extended periods of time. He said that the last of these periods was from August 2, 2018 as he was going to be out of the country for two to three weeks. As he was calling into the hearing from overseas, he said that he has not returned to Canada since August 2. The tenant testified that he relisted the availability of the rental suite for short term rentals on AirBnB on August 2, 2018. This relisting occurred almost two weeks after he received the landlord's 1 Month Notice seeking an end to this tenancy for subletting of the rental unit without the landlord's written consent.

The tenant's witness testified that after meeting with the landlord on July 19, the tenant was going to be away for some time in August and readvertised the availability of the rental unit on the AirBnB website on August 2. The tenant's witness who has been managing this matter for the tenant while the tenant has been abroad said that the rental suite has been rented out to short term renters for most of August.

The landlord gave undisputed sworn testimony that as recently as two days before this hearing, the tenant had been advertising the availability of the rental unit to AirBnB customers for September, October and November 2018, and only took the advertisement down on the day before this hearing. The landlord said that he was not interested in having his suite rented out to short term renters in contravention of the Addendum and the Strata Council's Rules. In addition to contravening the subletting rules of the tenancy agreement, the Addendum to that Agreement, the Form K document the tenants signed and the Strata Council's Rules, the landlord claimed that the tenants actions also constituted a breach of a material term of their tenancy agreement.

In addition to requesting the cancellation of the 1 Month Notice because the tenants are now complying with the landlord's request to cease using the premises for short term rentals, the tenants also requested the repair of a door on the oven. The tenants also maintained that the landlord had authorized the deactivation of the key fobs that had previously enabled the tenants and their guests/customers to use the gym and the visitor parking lot, as well as other features of this strata building. The landlord gave sworn testimony that neither he nor anyone acting as his agent or on his behalf has taken any such action regarding the key fobs. He said that such action could only be taken by those representing the Strata Council.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 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. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, the landlord issued the 1 Month Notice pursuant to paragraph 47(1)(i) of the *Act*, which permits a landlord to terminate a tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without consent from the landlord.

Residential Tenancy Policy Guideline #19 Assignment & Sublet provides guidance as follows:

#### **B. ASSIGNMENT**

*Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.*

#### **C. SUBLETTING**

*When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.*

**Use of rental property for travel/vacation accommodation**

*...However, there have been dispute resolution proceedings arising from tenants who have rented out all or part of their rental unit via AirBnB or other vacation/rental listing services and their landlord has issued a One Month Notice to End Tenancy (form RTB-33) for the tenant's failure to obtain the landlord's written consent to sublet. As stated above within section C, unless the tenant is acting as an agent for the landlord or has moved out of the unit, this is not a true sublet under the RTA. It is unlikely that a One Month Notice to End Tenancy (form RTB-33) for cause for the tenant's failure to obtain the landlord's written consent to sublet would be successful in these circumstances, although this type of action by a tenant may constitute other breaches of the Act or tenancy agreement for which the landlord might issue a One Month Notice to End Tenancy (form RTB-33)...*

I find the case at hand to be distinguishable from the above-noted example cited in Policy Guideline #19, as the testimony from the tenant and the tenant's witness confirmed that he had been renting out the entire rental suite while he was out of the country. The tenant said that he was calling in from overseas. While he remains out of the country, there is every reason to believe based on his recent behaviour that the AirBnB advertisements that were seeking short term renters for September, October and November, as recently as two days before this hearing will be restored.

The most recent series of short term rentals occurred even after the landlord raised concerns about such short term rentals to the point where the landlord served the tenant with a 1 Month Notice seeking an end to this tenancy for this very reason. Had the tenant taken down the advertising of the rental suite from the AirBnB website shortly after meeting with the landlord or even shortly after he received the 1 Month Notice, a case could be made that the landlord had acted prematurely in serving the 1 Month Notice. By contrast, I find that the tenant's actions in readvertising the rental suite on AirBnB and accepting short term rental customers for the entire month of August while he was out of the country and only taking down this advertisement shortly before this hearing supports the landlord's claim that the tenants have ignored the landlord's concerns and proceeded as they have before. I also find that the landlord's statements regarding the number of AirBnB rentals changed during the course of this hearing. The tenant's own witness who has been looking after AirBnB rentals for him admitted that the premises were rented out to different tenants for almost the entire month of August while the tenants have not been living there.

Although the tenants may not have “moved out” of the rental unit during the periods when they have listed their rental suite for AirBnB guests, I find the tenants have temporarily vacated the rental unit granting exclusive occupancy to AirBnB guests. As such, I find this arrangement to be a true sublet as contemplated under the *Act*.

I find the tenants did not have written consent of the landlord to sublet the rental unit and have proceeded to initiate these sublets even after receiving the 1 Month Notice from the landlord. I find that the landlord has provided sufficient evidence to justify that they had cause to issue the 1 Month Notice on the grounds that the tenants sublet exclusive use of the rental unit without the landlord’s written consent.

The tenants’ application to cancel the 1 Month Notice to End Tenancy is dismissed without leave to reapply.

Section 55(1) of the *Act* reads as follows:

*If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Section 52 of the *Act* reads in part as follows:

*In order to be effective, a notice to end tenancy must be in writing and must...*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant’s notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a an Order of Possession

that takes effect on September 30, 2018. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by 1:00 p.m. on September 30, 2018, the landlord may enforce this Order in the Supreme Court of British Columbia.

I also dismiss the tenants' application to obtain an order requiring the landlord to reactivate various fobs provided to them. The tenants will need to approach representatives of the Strata Council to obtain the reactivation of these fobs, as I find little evidence that the landlord was responsible for taking actions that led to the deactivation of these fobs.

As this tenancy is ending soon, I also dismiss the remainder of the tenants' application. The tenants did not provide any written evidence to support their claims to the landlord, and as such have not demonstrated their entitlement to the issuance of any orders in this regard.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

I dismiss the tenants' application in its entirety without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on September 30, 2018. Should the tenant(s) 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 06, 2018

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Residential Tenancy Branch