



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC OPC

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant also had an advocate. The One Month Notice to End Tenancy is dated October 26, 2018 to be effective December 4, 2018 and the tenant confirmed it was served by posting it on the door. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated November 5, 2018 by registered mail and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 1, 2011, it is now a month to month tenancy, rent is \$785 plus \$25 for utilities a month and a security deposit of \$3337.50.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure require the landlord to provide their evidence first as the landlord has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has allowed an unreasonable number of occupants in the unit;
- b) The tenant knowingly gave false information to a prospective tenant or purchaser;
- c) The tenant has assigned or sublet the rental unit without the landlord's written consent.

The landlord said the tenant had rented the unit to another person, D.M., in September 2018 for a tenancy commencing October 1, 2018. They provided shelter information which D. M. showed them showing the total rent of \$810 and D.M.'s portion to be \$300 with a \$150 security deposit. The tenant confirmed this was a one room tenancy with the kitchen facilities in the room and a separate bathroom. He said D.M. came to him in distress for he had lost his job

and needed someplace to stay temporarily. D.M. also told him he needed a shelter form so he could collect his PWD assistance. The tenant said he obliged by completing the form. When he received the Notice to End Tenancy, he told D.M. that he must leave for he was placing the tenancy in jeopardy. D.M. was abusive to him and he had to call the Police and have D.M. removed on October 28, 2018 so D.M. was only there 28 days. He said D.M. then tried to create problems for him by giving the landlord the shelter form that he had completed to help him. He said he never held himself out to be the landlord and never collected any money from the Ministry. He said D.M. got some money from them and paid him about \$250 for use of the premises but he collected no security deposit.

The landlord and tenant's advocate argued whether this was a sublease, whether this was subsidized housing and how to apply two clauses from the lease and addendum, namely clause 14 of the lease and clause 12 of the addendum. The landlord explained how BC Housing rules apply to subsidized housing. Apparently the tenant does not have to submit yearly proofs of income but he had to qualify initially. Only if his income decreases would he be required to submit more paperwork. They said his rent is subsidized. Economic rent for the unit is \$964 but is not based on his income now.

The landlord said that D.M. is on their waitlist and came to them after the Police removed him after an argument with the tenant. He provided them with the shelter information and said that the tenant told him he could move in September. The advocate contended this was hearsay. The landlord said they had issues with garbage after an inspection of the tenant's unit in September and it would have been impossible for someone to move in and sleep on the couch at that time because of the condition of the unit.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached..

### **Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. In respect to the first reason given under section 47 of the Act "The tenant has allowed an unreasonable number of occupants in the unit", I find two persons sharing a room may not be an unreasonable number of occupants depending on the circumstances. The landlord's definition of occupant was discussed. I find clause 14 of the lease states:

#### **Occupants and Guests:**

The landlord has selected the tenant on the basis of the number of occupants among other criteria. The tenant agrees that only those persons listed as occupants and tenants...are allowed to live in the rental unit during the term of the tenancy unless the landlord consents in writing. Any change in the number of occupants is material and of great importance to the landlord and entitles the landlord at his discretion to end the tenancy agreement. The tenant agrees to notify the landlord promptly of any change in the occupants. If the tenant is eligible for a rent subsidy, the tenant agrees that any person that resides with the tenant in excess of 14

days, whether or not consecutive, in any 12 month period, without the consent of the landlord will be considered an occupant and

- a) that person's income must be declared to the landlord immediately...
- e) the landlord must not impose restrictions on guests
- f) if the number of occupants in the rental unit is unreasonable, the landlord may discuss this with the tenant and may serve a Notice to End Tenancy.

Clause 12 of the Addendum states:

Occupants and Invited Guests Supplementary

If the tenant is eligible for a rent subsidy, the tenant agrees that any person who resides with the tenant for more than 30 days, whether or not consecutive, in any 12 month period, without the written consent of the landlord will be considered an occupant....

I find clause 14 and clause 12 are inconsistent in the wording, clause 14 being more limiting in the number of days before a guest might be defined as an occupant. I find the weight of the evidence is that D.M. resided with the tenant for only 28 days before being removed by the Police. I find he does not fall into the definition of occupant in Clause 12. While the landlord contended clause 14 of the lease applied which limited the stay to 14 days, I find the contra proferentem rule applies which is a rule in contract law which states that any clause considered to be ambiguous should be interpreted against the interests of the party that made the contract. That means that any inconsistency should be resolved to the benefit of the other party. As I find D.M. does not meet the definition of 'occupant' in clause 12 of the addendum, I find he was a guest of the tenant and the consent of the landlord was not required. I note also the tenant states he was not warned of the problem and clause 14(f) as quoted above states the landlord will discuss the problem with the tenant.

Regarding the second reason stated in the Notice, i.e. The tenant knowingly gave false information to a prospective tenant or purchaser, I find insufficient evidence to support this. The tenant agreed he filled out a form for his guest who had lost his job and his guest sent this to the Ministry so he could obtain assistance. I find the Ministry does not fit into the category of a prospective tenant or purchaser. I find D.M. is on the 'waiting list' according to the landlord but I find insufficient evidence that the tenant supplied false information to him. The form showed the amount of rent paid by the tenant and the contribution expected from the tenant, although according to the evidence, the tenant paid only about \$250 for his stay.

In respect to the third reason stated i.e. The tenant has assigned or sublet the rental unit without the landlord's written consent, I find the landlord believes the tenant was subletting but I find the tenant's evidence credible that he remained in the unit. His credibility is supported by the record of the argument with D.M. and him calling the Police on October 28, 2018 to remove him. Subletting is clarified in Residential Policy Guideline 19. A sublease conveys substantially the same interest in the property as held by the original lessee. I find the arrangement with D.M by the tenant was not a sublease as he did not convey his interest in the property to him. The shelter information supports the fact that he considered him a room mate sharing in rental

expenses. As this was not a sublet, I find this reason under section 47 of the Act does not apply to end the tenancy. I set aside and cancel the Notice to End Tenancy dated October 26, 2018 as I find insufficient evidence to support the causes cited under section 47 of the Act.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated October 26, 2018 is set aside and cancelled. The tenancy is continued until legally ended in accordance with the Act. The filing fee was waived.

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: December 11, 2018

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Residential Tenancy Branch