



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING SOCIETY and  
[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNC, OLC, MT, FFT

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for more time to apply to set aside a Notice to End Tenancy; for an Order requirement the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 07, 2019 the Application for Dispute Resolution and the Notice of Hearing were personally delivered to the Landlord's business address. The Property Manager acknowledged receipt of these documents.

On January 27, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was delivered to the Landlord's business address. The Property Manager acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 31, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Property Manager stated that this evidence was sent to the Tenant, via registered mail, on January 31, 2019. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed but it is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, and, if so, should that Notice be set aside?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began in 2008 and rent is due by the first day of each month.

The Property Manager stated that a One Month Notice to End Tenancy for Cause was served to the Tenant, by registered mail, on December 17, 2018. He stated that a copy of the Notice was also posted on the door of the rental unit on December 17, 2018. He stated that the Canada Post website shows that the registered mail was delivered on January 02, 2019.

The Tenant declared that he was away over Christmas and he did not receive the Notice to End Tenancy that was mailed to him until January 02, 2019. He stated that he never received the Notice to End Tenancy that was posted on the door of the rental unit.

The Landlord and the Tenant agree that the One Month Notice to End Tenancy declared that the Landlord was ending the tenancy because the tenant has allowed an unreasonable number of occupants in the rental unit; the tenant has assigned or sublet the rental unit without the landlord's written consent; and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In support of the notice to end the tenancy on the basis of the tenant allowing an unreasonable number of occupants in the rental unit the Property Manager stated that:

- in June of 2018 the Landlord learned that the Tenant was allowing a young adult and her mother to live in the second bedroom of the rental unit;
- shortly after this discovery an agent for the Landlord met with the young adult and her mother and they advised they were living in the rental unit;
- he was told the mother pays rent to the Tenant;
- Canada Mortgage and Housing Corporation guidelines stipulates that two adults cannot share a bedroom unless they are a "couple"; and
- it is the Landlord's policy that two adults cannot share a bedroom unless they are a "couple".

In response to this allegation the Tenant stated that:

- he rents the second bedroom in the rental unit to a female;
- the female allows her adult daughter to stay overnight in the unit;
- the adult daughter is not living in the unit on a full-time basis; and

- the female is moving out at the end of this week.

In his email of December 06, 2018 the Tenant informed the Landlord that the adult daughter has mental health issues and has been living in North Vancouver since September of 2018.

The Landlord submitted a housing application made by the female and her adult daughter, dated July 01, 2018. The application asks the applicant to provide a current residential address. The applicants listed their address as the rental unit.

The Landlord is attempting to end this tenancy, in part, on the basis of section 47(1)(i) of the *Act*, which authorizes a landlord to end a tenancy if a tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent.

In support of the notice to end the tenancy on the basis that the tenant has assigned or sublet the rental unit without the landlord's written consent the Property Manager stated that:

- the Tenant is residing in North Vancouver; and
- he and the assistant manager have been watching the rental unit since July of 2018 and have never seen the Tenant stay overnight.

In response to this allegation the Tenant stated that:

- his ex-wife lives in North Vancouver;
- his ex-wife has been ill for an extended period of time;
- he regularly stays with his ex-wife to assist with parenting their children while she is ill;
- a female has been renting his spare bedroom for several months;
- he stays in the rental unit two or three times per week;
- he keeps most of his personal belongings in his bedroom at the rental unit; and
- he has a suitcase at his ex-wife's home.

The Landlord is attempting to end this tenancy, in part, on the basis of section 47(1)(h) of the *Act*, which authorizes a landlord to end a tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In support of the notice to end the tenancy on the basis that the tenant has breached a material term of the tenancy agreement the Property Manager stated that:

- the Tenant has breached section 13 of the tenancy agreement;
- the Tenant has breached section 13 by allowing a person to stay in the rental unit

for more than two weeks;

- the Tenant has breached section 13 by not obtaining written permission to have another person occupy the rental unit for more than two weeks; and
- section 13 specifies that failure to obtain written consent to have a person occupy the rental unit is a breach of a material term of the tenancy agreement and that the landlord has the right to end the tenancy if the breach is not corrected within a reasonable time.

In response to this allegation the Tenant stated that:

- when he signed the tenancy agreement he was aware that he needed to have written consent to have a third party live in the unit;
- he attempted to meet with the Residential Manager on two occasions in April of 2018 for the purposes of having the female added to the tenancy agreement;
- he telephoned the Resident Manager on several occasions in May of 2018 for the purposes of having the female added to the tenancy agreement; and
- the Resident Manager did not attend the meetings in April as he had a heart attack.

The Resident Manager stated that:

- the Tenant did not arrange a meeting in April or any other time for the purposes of having a third party added to the tenancy agreement;
- the Tenant did phone him in May of 2018 but that was not for the purposes of having a third party added to the tenancy agreement; and
- he had a heart attack in September of 2018, not May of 2018.

The Landlord and the Tenant agree that the Landlord served the Tenant with a letter, dated November 26, 2018. In this letter the Landlord declared, in part, that the Tenant did not have authorization to allow two women to live in the rental unit; the presence of the two women is a breach of section 13 and 31 of the tenancy agreement; the women must be removed from the rental unit by December 15, 2018; and failure to remove the women would result in service of a Notice to End Tenancy.

Both parties submitted a copy of an email from the Tenant, dated December 06, 2018. In this email the Tenant asked the Landlord to add the female to his tenancy agreement; he informed the Landlord that the female's daughter resides elsewhere; he declared that if the female's daughter wishes to move in he will purchase a daybed for "upstairs" and allow the daughter to use his bedroom; and that he does not believe the unit is overcrowded.

Both parties submitted a copy of an email from the Tenant, dated December 13, 2018. In this email the Tenant asked the Landlord to provide him with the necessary forms to add the female to his tenancy agreement.

The Landlord did not submit a copy of the Landlord's reply to either of the aforementioned emails.

In support of the notice to end the tenancy on the basis that the tenant has breached a material term of the tenancy agreement the Property Manager stated that:

- the Tenant has breached section 31 of the tenancy agreement; and
- the Tenant has breached section 31 by providing keys to another person who lives in the rental unit.

In support of the notice to end the tenancy on the basis that the tenant has breached a material term of the tenancy agreement the Resident Manager stated that:

- when this tenancy began he specifically discussed each section of the tenancy agreement with the Tenant.

In response to this allegation the Tenant stated that:

- he was given two keys to the rental unit;
- he did not copy a key to the residential property;
- he did give the female who is occupying the unit one of his keys;
- he has given that female permission to live in the unit so she is not an unauthorized person;
- he does not believe the Resident Manager was the person who discussed the tenancy agreement with him at the start of the tenancy;
- whoever discussed the tenancy agreement with him did not specifically discuss each section of the tenancy agreement with him; and
- he does not recall if he was specifically told, at the start of the tenancy, that he could not give a key to a guest or an occupant.

### Analysis

Section 47 of the *Residential Tenancy Act (Act)* authorizes a landlord to end the tenancy for a variety of reasons, providing the landlord provides the tenant with proper notice to end the tenancy. When a landlord wishes to end a tenancy on the basis of section 47 of the *Act* the landlord bears the burden of proving there are grounds to end the tenancy.

On the basis of the testimony of the Property Manager and the absence of evidence to the contrary, I find that a One Month Notice to End Tenancy was posted on the door of the rental unit on December 17, 2018. I find that there is insufficient evidence, however, to establish that the Tenant received the Notice that was posted on the door. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that he did not receive that Notice. I find that the testimony of both parties could be true, as the Notice could have been removed by a

third party.

On the basis of the testimony of the Property Manager and the absence of evidence to the contrary, I find that a One Month Notice to End Tenancy was sent to the Tenant, via registered mail, on December 17, 2018. On the basis of the undisputed evidence I find that the Tenant received this Notice on January 02, 2019.

Section 47(4) of the *Act* stipulates that a tenant may dispute a One Month Notice to End Tenancy by making an application for dispute resolution within ten days after the date the tenant receives the notice. Residential Tenancy Branch records show that the Tenant filed this Application for Dispute Resolution on January 04, 2019. As the evidence shows the Tenant received the Notice on January 02, 2019 and he applied to dispute it on January 04, 2019, I find that the Tenant disputed this Notice within the timeline established by section 47(4) of the *Act*.

In adjudicating this matter I have placed no weight on section 90(a) of the *Act*, which stipulates that a document given or served by mail, unless earlier received, is deemed to be received on the 5th day after it is mailed. I have placed no weight on this section as this section is only to be relied upon if it is not known when the document was actually received. The “deemed service” provision of this section is rebuttable and, in these circumstances, the evidence clearly establishes that the Notice was received on January 02, 2019.

As the Tenant disputed this One Month Notice to End Tenancy within the timeline established by section 47(4) of the *Act*, I find that there is no need to consider his application for more time to apply to set aside a Notice to End Tenancy.

The Landlord is attempting to end this tenancy, in part, on the basis of section 47(1)(c) of the *Act*, which authorizes a landlord to end a tenancy if there are an unreasonable number of occupants in a rental unit.

If I were to accept the Tenant’s evidence I would conclude that he is living in the two bedroom rental unit with a roommate, who occasionally allows her daughter to stay in the rental unit. If I were to accept the Landlord’s evidence I would conclude that the Tenant is not living in the unit and that two females are living in the two bedroom rental unit. Even if I were to conclude that the Tenant is living in one of the bedrooms of the unit and two adult females are living in the other bedroom, I would conclude that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(c) of the *Act*.

I find that having three adults living in a two bedroom unit does not constitute an unreasonable number of occupants. Rather, I find that having three adults in a unit of this size is quite common, albeit often two of them are usually a “couple”. I find that the Landlord has submitted no evidence to establish that having three adults in a two bedroom unit has a negative impact on the residential property or on anybody living on the residential property.

In adjudicating this matter I have placed on weight on the Landlord’s submission that Canada Mortgage and Housing Corporation guidelines stipulates that two adults cannot share a bedroom unless they are a “couple”. The Landlord has submitted a document titled “National Occupancy Standards” which suggests that two adults cannot share a bedroom unless they are a “couple”. Without evidence regarding the purpose of those standards that allows me to put those standards into context, this document does not cause me to conclude it is unreasonable to have three adults, none of whom are in a relationship with the other, living in a two bedroom unit.

In adjudicating this matter I have placed no weight on the Landlord’s submission that it is the Landlord’s policy that two adults cannot share a bedroom unless they are a “couple”. While this policy may guide the Landlord when the Landlord is considering an application for a tenancy, the policy does not serve as grounds to end an existing tenancy on the basis of section 47(1)(c) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant is not living in the rental unit. In reaching this conclusion I find that the Landlord has submitted insufficient evidence to corroborate the Property Manager’s submission that the Tenant is not living there or that refutes the Tenant’s testimony that he stays there two or three days per week.

Even if I accepted the Landlord’s submission that the Tenant never stays at the rental unit I would conclude that the Tenant is occupying the rental unit. This conclusion is based on the Tenant’s undisputed evidence that he has his personal belongings in one of the bedrooms. This testimony is consistent with the Landlord’s submission that two women are sharing one of the bedrooms. In the event the Tenant did not have his personal belongings in one of the bedrooms, it would be reasonable to conclude that the women would each be using one of the bedrooms.

Residential Tenancy Branch Policy Guideline #19, with which I concur, reads, in part:

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. When either a manufactured home park tenancy or a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment. It is possible that the original tenant may be liable to the landlord under the original agreement.

Residential Tenancy Branch Policy Guideline #19, with which I concur, also reads, in part:

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

In the absence of evidence that establishes the Tenant is not living in the rental unit and on the basis of my conclusion that he has personal property in one of the bedrooms, I find that he has neither assigned the tenancy nor sublet the rental unit. Clearly he has not transferred his rights to the rental unit to a third party, either permanently or temporarily, and he had retained the right to occupy the unit. I find the evidence shows that he has allowed a third party to share the rental unit with and that he is living with that person(s) as a roommate.

As the Landlord has failed to establish that the Tenant has assigned or sublet the rental unit I find that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(i) of the *Act*. There is nothing in the *Act* that allows a landlord to end a tenancy if the tenant has a roommate, unless that is a breach of a material term of the tenancy or there are an unreasonable number of people living in the unit as a result of the roommate.

On the basis of the undisputed evidence I find that there section 13 of the tenancy agreement requires the Tenant to obtain written permission from the Landlord if he wishes to have a person not previously named on the tenancy agreement to live in the rental unit. On the basis of the undisputed testimony that a female who is not listed on the tenancy agreement is living in the rental unit, I find that the Tenant breached section



13 of the tenancy agreement.

I find that there is insufficient evidence to establish that a second female was living in the rental unit in November of 2018, although I accept that she has been known to stay at the unit. In reaching this conclusion I find that there is insufficient evidence to support the Landlord's submission that the female occupant's daughter is currently living in the unit or to refute the Tenant's submission that the daughter has been residing in North Vancouver since September of 2018.

In adjudicating this matter I have placed little weight on the Landlord's submission that in the summer of 2018 female occupant and her daughter told an agent for the Landlord that they were living in the unit. I find that this information does not establish that the daughter was still living in the rental unit in November of 2018.

In adjudicating this matter I have placed little weight on the housing application made by the female and her adult daughter, dated July 01, 2018. Even though this application indicates the daughter was living in the rental unit in July of 2018, it does not establish that the daughter was still living in the rental unit in November of 2018.

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if a tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

On the basis of the undisputed evidence I find that on November 26, 2018 the Landlord informed the Tenant, in writing, that there were two people living in the rental unit that were not named on the tenancy agreement; that they considered this to be a material breach of a term of the tenancy agreement; and that failure to remove the two women by December 15, 2018 would result in service of a Notice to End Tenancy.

On the basis of the emails submitted in evidence, dated December 06, 2018 and December 13, 2018, I find that the Tenant attempted to remedy the breach by asking the Landlord to add the female who is living in his rental unit to the tenancy agreement. As there is no evidence to show that the Landlord responded to the Tenant's request to have a female added to his tenancy agreement, I find that the Landlord prevented the Tenant from remedying his breach of section 13 of the tenancy agreement in a reasonably timely manner.

Had the Landlord named the female as an "occupant" on the tenancy agreement in December of 2018, as the Tenant requested, the Tenant would no longer be in breach

of section 13 of the *Act*. Given that this is a two bedroom apartment and in the absence of evidence that establishes the female would not be a suitable tenant, I can find no reasonable explanation for the Landlord failing to comply with the Tenant's request to have a single adult added to his tenancy agreement.

Had the Landlord responded to the Tenant's request to add the female to his tenancy agreement and informed him that his request was being denied, the Tenant could have taken appropriate action. For example, the Tenant could have filed an Application for Dispute Resolution seeking an Order requiring the Landlord to comply with his request to add the female to his tenancy agreement or he could have asked the female to vacate the unit. In these circumstances, where the Landlord appears to have simply ignored the Tenant's requests, I find that the Landlord's silence made it difficult, if not impossible, for the Tenant to remedy his breach of section 13 of the tenancy agreement.

As the evidence establishes the Tenant was attempting to remedy his breach of section 13 of the tenancy agreement and the Landlord was preventing him from doing so, I find that the Landlord does not yet have the right to end this tenancy on the basis of this breach.

The relevant portion of section 31 of the tenancy agreement reads:

Subject to the Act no lock or security device, such as a door chain or alarm system, may be installed or changed or altered, and extra keys must not be made for any lock in the residential property or rental unit, except with the prior written consent of the Landlord. The entry to any part of the residential property or rental unit by unauthorized possession of a key or otherwise by any person will be treated by the Landlord as an illegal activity for which the Landlord may issue a Notice to End Tenancy.

As there is no evidence to refute the Tenant's testimony that he did not copy a key to the residential property, I cannot conclude that he has breached section 31 of the tenancy agreement by doing so.

Even if I accepted the Landlord's submission that the Tenant breached section 31 of the tenancy agreement by allowing an occupant or a guest to access the rental unit with a key, I would find that this does not constitute grounds to end the tenancy pursuant to section 47(1)(h) of the *Act*. Section 47(1)(h) of the *Act* allows a landlord to end a tenancy if a tenant breaches a material term of the *Act* and I find that the Landlord has submitted insufficient evidence that providing a key to a guest or an occupant is a material term of the tenancy agreement.

Residential Tenancy Branch Policy Guideline #8, with which I concur, reads, in part:

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. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

In determining that the Landlord has submitted insufficient evidence to establish that allowing an unauthorized occupant/guest to enter the unit with a key is a material term of the tenancy agreement, I was heavily influenced by the absence of evidence that establishes the Tenant was specifically informed, at the start of the tenancy, that allowing an unauthorized person to enter the unit with a key was a material breach of the tenancy.

I favour the Tenant's testimony that each section of the tenancy agreement was not specifically discussed with him at the start of the tenancy over the Resident Manager's testimony that he specifically discussed each section of the tenancy agreement with the Tenant at the start of the tenancy. Although there is no evidence to corroborate either version of events, I find, on the balance of probabilities, that the Tenant's version is more likely as it would be extremely rare for an agent for a landlord to specifically discuss each section of a tenancy agreement with a tenant.

Even if I accepted the Resident Manager's testimony that he specifically discussed section 31 of the tenancy agreement with the Tenant, I find there is no evidence that establishes he told the Tenant, at the start of the tenancy, that allowing an unauthorized person to enter the unit with a key was a material breach of the tenancy.

In determining that the Landlord has submitted insufficient evidence to establish that allowing an unauthorized occupant/guest to enter the unit with a key is a material term I was further influenced by the fact that section 31 of the tenancy agreement does not

specify that this is a material term of the tenancy agreement. As this tenancy agreement does identify some terms as material terms of the tenancy agreement, such as section 13, I find it reasonable to conclude that all terms that the Landlord considered to be material terms would be similarly identified.

I note that section 31 of the tenancy agreement declares that entry to any part of the residential property or rental unit by unauthorized possession of a key or otherwise by any person will be treated by the Landlord as an illegal activity for which the Landlord may issue a Notice to End Tenancy. I further note that the Landlord has not informed the Tenant that the tenancy is ending on the basis of illegal activity and I therefore do not need to determine if the Landlord has grounds to end this tenancy on the basis of illegal activity.

I find that the Landlord has failed to establish grounds for ending this tenancy and I therefore grant the Tenant's application to set aside this One Month Notice to End Tenancy.

I find that the Tenant's Application for Dispute Resolution has merit and I therefore authorize the Tenant to reduce one monthly rent payment by \$100.00 in compensation for the fee paid to file this Application.

### Conclusion

The Tenant's application to set aside this One Month Notice to End Tenancy is granted.

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: February 12, 2019

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Residential Tenancy Branch