



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KASLO RENTALS INC./RENFREW & E. 10TH NOMINEE  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *OPC, CNC, OLC, RP, LRE, LAT, AS, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for cause and for the recovery of the filing fee. The tenant applied to cancel the notice to end tenancy for cause, and for an order directing the landlord to comply with the *Act*, carry out repairs, to allow the tenant to change locks and to sublet the rental unit.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord was represented by their agent and legal counsel.

As both parties were in attendance I confirmed the service of documents. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence and stated that he did not file any evidence of his own. I find that evidence was served to the landlord in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for multiple remedies including an order for the landlord to comply with the *Act* and an order for the landlord to make repairs. As these sections of the tenant's application are unrelated to the main section which is to cancel the one-month notice, I dismiss these sections of the tenant's claim with leave to reapply. Accordingly this hearing only dealt with the tenant's application to set aside the notice to end tenancy.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

### **Background and Evidence**

The tenancy started on June 01, 2018. The monthly rent is \$3,600.00 payable on the first of the month. Prior to moving in the tenant paid a security deposit of \$1,800.00. The rental unit consists of a six-bedroom house. A copy of the tenancy agreement was filed into evidence. The clause regarding the number and names of people who would be occupying the rental unit is blank.

The tenant stated that as per a term in the addendum, the landlord permitted him to sublet the unit. The tenant agreed that he does not live in the rental unit and rents out rooms for \$600.00 - \$800.00. A copy of the addendum was filed into evidence and supports the testimony of the tenant that he was permitted by the landlord, to sublet the rental unit.

Sometime in March 2019, the landlord received a letter dated March 12, 2019, from the local municipality informing him that the house was being used as a rooming house and that this was in contravention of the local by laws. Other safety issues were brought to the landlord's attention which included installing smoke detectors and removing locks on internal doors. The landlord served the tenant with a copy of the letter and order from the City.

The landlord stated that she provided a notice of inspection to the tenant for an inspection to be carried out on March 15, 2019. The tenant denied having received this notice. The landlord visited the unit on this day and found 11 people living in the rental unit.

The landlord testified that as a follow up to the inspection on March 15, 2019, she served the tenant with another notice of an inspection scheduled for March 18, 2019. When the landlord arrived at the rental unit she was denied access and she was unable to use her own key as the locks to both the front and back doors had been changed.

The landlord stated that she was able to access the garage as it was unlocked. Inside the garage, she found a mattress, some furniture, used clothing and food.

On March 18, 2019, the landlord served the tenant with a notice to end tenancy for cause along with copies of the letter and order from the local municipality, to stop using the home as a rooming house

The reasons for the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of the landlord.
- Tenant has assigned or sublet the rental unit without landlord's written consent

The tenant disputed the notice in a timely manner. The tenant stated that as per the addendum to the tenancy agreement he is permitted to sublet and therefore has not breached a material term of the tenancy agreement.

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has allowed an unreasonable number of occupants in the unit, has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of the landlord or has assigned or sublet the rental unit without landlord's written consent.

Based on the testimony and documents filed into evidence, I find that the parties entered into a rental agreement for a tenancy that started on June 01, 2018. Upon review of the tenancy agreement, the names and number of occupants allowed in the rental unit, is not listed. The rental unit is a six-bedroom home and the landlord alleges that there are at least 11 people occupying the home. Since the number of people allowed to reside in the home is not specified in the tenancy agreement, I find that while 11 people occupying a six-bedroom home may be unreasonable, it does not warrant putting an end to tenancy.

The landlord has not provided sufficient evidence to support one of the reasons for the notice to end tenancy which is the tenant has engaged in illegal activity that is likely to jeopardize a lawful right or interest of the landlord. The tenant agreed that he has changed the locks without the landlord's permission or an order from the Residential Tenancy Branch permitting him to do so. The tenant is hereby put on notice that he must reinstall the original locks or provide the landlord with a key to the new locks.

The addendum to the tenancy agreement was also filed into evidence. As per this addendum, the landlord has permitted the tenant to sublet and therefore I find that the tenant has not breached the tenancy agreement.

I accept the landlord's evidence that the local municipality has directed the landlord to cease using the property as a rooming house. The tenant has been provided with the letter and order from the municipality.

One of the reasons on the notice to end tenancy for cause is

- Rental unit must be vacated to comply with a government order

The landlord did not check mark this reason which would have justified putting an end to this tenancy. Section 47 of the *Residential Tenancy Act* addresses this reason and states:

**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:

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

The purpose of serving a notice to end tenancy to the tenant is to notify the tenant being served of matters relating to reasons for wanting to end the tenancy and to provide the person with an opportunity for rebuttal and to rectify the situation.

Based on the testimony of both parties, I find that the landlord conducted inspections on March 15, 2019 and March 18, 2019 and served the tenant with a notice to end tenancy on March 18, 2019. I find that the landlord served the notice to end tenancy without giving the tenant an opportunity to resolve the issues of subletting and the number of occupants.

I accept that the tenant may have had an unreasonable number of people living in the rental unit, had locks on internal doors and changed the locks without permission.

However, I further find that the landlord served the notice to end tenancy prematurely and prior to giving the tenant an opportunity to rectify the issues. Therefore, I am not satisfied that this justifies bringing this tenancy to an end.

The landlord is at liberty to issue another notice to end tenancy for the purpose of complying with a local government order.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated March 18, 2019. As a result, the tenancy shall continue in accordance with its original terms.

Since the tenant is successful in his application he is entitled to recover the filing fee of \$100.00. the tenant may make a one-time deduction of \$100.00 from a future rent. The landlord must bear the cost of filing their own application.

### **Conclusion**

The notice to end tenancy dated March 18, 2019 is set aside.

The tenant is ordered to provide the landlord with a key to the new locks installed by the tenant or re install the original locks.

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: May 17, 2019

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Residential Tenancy Branch