



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, DRI, FFL

### Introduction

On April 11, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to dispute an additional rent increase pursuant to Section 41 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 29, 2019, the Tenants amended their Application to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Act*.

Both Tenants attended the hearing. P.B. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing package by registered mail on April 18, 2019 and P.B. confirmed receipt of this. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenants advised that they served the Amendment to the Landlord by registered mail on April 29, 2019 and P.B. confirmed receipt of this. As such, I am satisfied that the Landlord was served the Amendment.

The Tenants also advised that they served the Landlord with their evidence by registered mail on May 1, 2019 and P.B. confirmed that this was received. Based on this, I am satisfied that service of this evidence complies with the time frame requirements of Rule 3.14 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering my decision.

P.B. advised that the Landlord served the Tenants with their evidence by registered mail on May 16, 2019 and the Tenants confirmed that they received this package on May 22, 2019. As service of this evidence complies with the time frame requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering my decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Landlord's Notice, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on October 15, 2016 and rent was established at \$1,400.00 per month. Rent was initially due on the fifteenth day of each

month; however, rent was changed to be due on the first of each month approximately a year ago. A security deposit of \$600.00 was also paid.

P.B. stated that the Landlord served the Notice to the Tenants by hand on April 20, 2019; however, the Tenants advised that the Notice was slipped under their door on April 22, 2019 and they received it that day. The reasons the Landlord served the Notice are because the "Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park" and the "Tenant has assigned or sublet the rental unit/site without landlord's written consent." The Notice indicated that the effective date of the Notice was May 30, 2019.

P.B. referenced the tenancy agreement, that was submitted as documentary evidence, to support his position that the whole house was not rented to the Tenants. However, he acknowledged that there is no specific indication on the tenancy agreement that only the upstairs of rental unit was rented to the Tenants. He contended that the basement has a separate address and its own entrance. He advised that the whole house has always been rented as two separate suites and the Landlord has never faced this problem of a tenant renting out the basement on their own accord without consent before. He submitted that the basement was uninhabitable and needed renovations, and when the Tenants moved in, they asked the Landlord if he would permit them to renovate the basement suite. The Landlord agreed to this proposal with the intention that the Landlord would rent out the basement once it was complete.

He stated that his parents leave the country every November and return in March. He advised that in June 2018, the Tenants removed a fence without the Landlord's permission and this resulted in a water leak into the basement of the house. When the Landlord investigated, he discovered that the Tenants had rented out the basement suite without his permission. He asked the Tenants why they rented out the basement and the Tenants told him that they were allowed to as they rented out the entire house. P.B. stated that the Tenants offered the Landlord \$300.00 extra for rent but the Landlord refused this offer as he did not agree. This argument continued until the Landlord left the country again in November.

When the Landlord returned in March 2019, the Landlord sought information from the Residential Tenancy Branch and spoke to the basement tenant. P.B. advised that the basement tenant stated that the Tenants told her that they had the Landlord's permission to rent the basement.

P.B. submitted that while the Tenants' position is that the entire house was rented to them, Tenant S.P. contradicts himself in his own evidence as he stated that he is not sure that he can rent the basement, that he did not have the written permission from the Landlord to do so, and that he did not know that this was required. P.B. reiterated that the Landlord never gave the Tenants written permission to rent the basement suite.

Tenant S.P. advised that the tenancy agreement between the Tenants and the Landlord indicates that the whole house was rented to them. He stated that the house was in deplorable shape, and he entered into a renovation agreement with the Landlord to rent the whole house and renovate it in exchange for reduced rent and the opportunity to cover his labour and materials cost by being able to rent the basement suite when it was completed. He submitted this renovation agreement as documentary evidence; however, this agreement was not signed by the Landlord and it was his belief that this arrangement was agreed upon as a "verbal, handshake agreement". He advised that there was no differentiation in the upstairs and basement unit, so he installed a chime for the basement unit and that he collects the mail for them as well.

He submitted that when the basement renovation was complete, he rented the basement on January 1, 2018, under the authority of a "verbal, handshake agreement" from the Landlord to act as the landlord. He also stated that part of this agreement was to collect the rent to offset his costs of the renovation, and that these agreements can be confirmed by Tenant L.P., who had been a witness to these conversations. He confirmed that he did not have written permission from the Landlord to act in this capacity or to rent out the basement, and as far as he knew at the time, he was not aware that he was doing anything wrong or that he required this consent from the Landlord in writing. He submitted that the Landlord knew that the basement was rented for a year and did not do anything about it.

As neither party submitted a copy of the Notice, I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*. In accordance with Rule 3.19 of the Rules of Procedure, an Arbitrator may provide direction on requesting late evidence. A copy of the One Month Notice to End Tenancy for Cause that is the subject of this dispute was requested to be provided by both parties as it is essential to the matter at hand. Both parties provided me with a copy of this Notice that is in dispute after the hearing concluded.

### Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52

of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

Section 34 of the *Act* outlines the provisions with respect to assignment or subletting of the rental unit, and Subsection 1 states that the Landlord must give consent in writing before the Tenant may do so.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

***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:***

- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];*
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;*

When reviewing the evidence and testimony before me, while both parties disagree with whether the entire house was rented to the Tenants or if it was just the upstairs unit, I find that it is not necessary to make this determination as it is undisputed either way that the Tenants rented out a portion of the house without the Landlord's written consent. Had the Tenants been entitled to the whole house, the Tenants required the Landlord's written permission to rent out the bottom portion. While it is the Tenants' position that they had a "verbal, handshake agreement", the *Act* requires the Landlord's written consent first, which there is no evidence of. Had the Tenants been entitled to just the upstairs unit, the Tenants were not entitled to rent out the basement unit that was not a part of their tenancy. Either way, the Tenants created a tenancy with another tenant without the Landlord's written consent.

Based on the evidence before me, I am satisfied that the Landlord has substantiated that the Tenants sublet the rental unit without the Landlord's written consent and that this was justification to warrant the Notice being issued.

Consequently, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. As such, the Order of Possession takes effect at **1:00 PM on June 30, 2019**. As the Tenants have engaged into a tenancy with the basement tenant without the Landlord's written consent, this Order of Possession will apply to the basement tenant, as well as any other occupant of the rental property.

As the Tenants have been unsuccessful in their claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I dismiss the Tenants' Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on June 30, 2019 after service of this Order** on the Tenants. Should the Tenants 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: June 3, 2019

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Residential Tenancy Branch