



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPB, OPC

### Introduction:

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. An order to recover the cost of the filing fee

The tenant(s) failed to appear at the scheduled start of the hearing which was 9:30 a.m. on July 22, 2019. A representative of the landlord was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenant(s) failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The representative of the landlord was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was personally served on the Tenant on April 30, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the Tenant by mailing, by

registered mail to where the Tenants reside on June 10, 2019. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on June 1, 2017 and end on May 31, 2018. The rent is \$1300 per month payable on the first day of each month. The tenant paid a security deposit of \$650 on March 1, 2017.

Briefly, the landlord gave the following evidence:

- The tenants lived in the rental property from June 1, 2017 to October 2017.
- They moved out of the rental property at that time and rent 6 rooms to various tenants.
- In May 2018 a number company purchased the property and appointed the FSR as their property manager. The tenants signed a copy of the residential tenancy agreement on June 7, 2018. The tenants did not advise FSR they were not longer living in the rental property.
- On October 1, 2018 CTI Services was appointed as agent for the landlord in relation to this property.
- On October 5, 2018 the representative of CTI Services visited the property to conduct an inspection. He noticed there was a large number of locked rooms
- The tenants do not live in the rental unit. They rent out 6 rooms to different tenants. Tenants represent themselves as the owners to prospective tenants. First Service Residential is the landlord and they have not signed any documents to allow for subletting of the home.
- The subletting of the rental property to 6 tenants had the effect of voiding the landlord's insurance.
- Paragraph 9 of the residential Tenancy agreement includes the following:

“Assign and Sublet

9(1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed

length of 6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.”

- The tenants have not requested nor received written consent from the landlord.
- The rent is \$1300 per month. The representative of the landlord estimates the tenants are receiving over \$5000 per month in rent from sub-tenants.
- The rent for June and July 2019 has not been paid.
- The tenants advised the owner of the property that they would be vacating the rental property at the end of July 2019.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- ...
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site without landlord’s written consent
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

An arbitrator does not have the jurisdiction to extend the time limit to apply for arbitration to dispute a Notice to End Tenancy if it was filed after the effective date of the Notice to end. Policy Guideline #36 includes the following:

**Notice to End**

**Application for Arbitration Filed After Effective Date**

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a one month Notice to End Tenancy personally on the tenants on April 30, 2019. The Notice set the end of tenancy for May 31, 2019. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. I determined that it was appropriate to set the effective date of the Order of Possession for July 31, 2019 to allow for the orderly winding up of the various sub-tenancies..

Further, I determined the landlord has sufficient grounds to end the tenancy on the merits on the basis that the tenants have assigned or sublet the rental property without the consent of the landlord. .

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Cost of Filing fee:

As the landlord has been successful I ordered that the Tenants pay to the landlord the cost of the filing fee in the sum of \$100 such sum may be deducted from the security deposit.

Conclusion:

I granted an Order of Possession effective July 31, 2019. I ordered that the Tenant shall pay to the landlord the cost of he filing fee in the sum of \$100 such sum may be deducted from the security deposit.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on both parties.**

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: July 22, 2019

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Residential Tenancy Branch