



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that they placed the 1 Month Notice under the tenant's door on May 31, 2019. Although this is not an allowed way to serve a tenant with a notice to end tenancy, the tenant confirmed that they received the 1 Month Notice the following day on June 1, 2019. On this basis, I find that there is evidence that the tenant was duly served with the landlord's 1 Month Notice on June 1, 2019, in accordance with section 88 of the *Act*. As the landlord confirmed receipt of a copy of the tenant's dispute resolution hearing package well in advance of this hearing, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*. As I noted at the hearing, a number of pages of the landlord's written evidence of text messages apparently exchanged with the tenant were of such poor quality that I could not read them in their entirety.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties signed a Residential Tenancy Agreement (the Agreement) for a tenancy for a lower level studio suite in this 16 unit, two level rental building, on April 26, 2019. According to the terms of this month-to-month Agreement, monthly rent of \$900.00 is payable in advance by the first of each month. The landlord continues to hold the tenant's \$450.00 security deposit paid when this tenancy began.

The Agreement, a copy of which was entered into written evidence by the landlord, stipulated at Section 1 that smoking, excessive use of alcohol, narcotics and pets were "strictly prohibited on the premises or property, in the building, in the apartment, furnace room, or on the patios/decks." Section 2 of the Agreement noted that the premises, the property and all public areas in the building were to be kept reasonably quiet between the hours of 10:00 p.m. and 9:00 a.m. Section 4 of the Agreement reads as follows:

*4. Only the individual listed on the "tenancy agreement" and "rental application" shall occupy the apartment. If there is anyone else in the apartment when you are not present the landlord/manager has to know...*

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenant to end this tenancy by June 3, 2019 for the following reasons, any one of which could legally end this tenancy:

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

*Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

*Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

Although the landlord identified June 3, 2019, as the effective date to end this tenancy, this date automatically corrects to July 31, 2019, the earliest possible date that a 1 Month Notice duly served to the tenant on June 1, 2019 could have taken effect. The parties agreed that the tenant has paid monthly rent for July 2019.

In the tenant's application for dispute resolution, the tenant maintained that they had received no warnings that their activities were considered to be in breach of their Agreement, and if not corrected could lead to an end to their tenancy for cause. The landlord did not deny the tenant's claim that no written warning was given to the tenant regarding the landlord's concerns. However, the landlord and Landlord PRH said that they were attempting to be conciliatory and respond to the tenant's expressed wish to deal with these issues in an informal way in person, without having to resort to exchanges of written communication with respect to these matters.

The tenant gave undisputed sworn testimony, supported by some written evidence, that they provided the landlord with an extra \$450.00 payment for the 14 days when a friend of the tenant's was residing in this rental suite. The landlord and Landlord HZ, the owner of the building (the owner) said that the rental suite is a small studio unit, no bigger than 400 square feet. The landlord did not dispute the tenant's claim that the tenant's friend discontinued residing in the rental suite shortly after the landlord issued the 1 Month Notice.

The tenant also gave sworn testimony and written evidence that they were unaware that smoking was not allowed on the patio outside this rental unit. The tenant testified that they have discontinued the practice of smoking on the patio, instead limiting their smoking to the sidewalk beyond the property line of this rental property. The tenant

said that he commences work very early six days per week, and is usually in bed by 9:00 p.m.

The landlord testified that they have received complaints from other tenants in this building about the tenant and his friends smoking on the patio, making noise on the patio late at night, and littering the common areas of the grounds for this rental building with garbage and beer cans. The landlord did not provide the names of the tenant or tenants who found the tenant's activities objectionable and did not provide anything in writing from these individuals. No other tenant in this building gave sworn testimony at the hearing in support of the landlord's attempt to end this tenancy for cause.

Landlord PRH, and to a lesser extent the landlord, confirmed that since receiving the 1 Month Notice the tenant has "cleaned up his act", as Landlord PRH described it and is "under control for now." The landlord gave sworn testimony that there have still been occasions since the 1 Month Notice was issued where there has been a recurrence of the tenant's smoking, drinking, and excessive noise. The landlord and Landlord PRH said that friends of the tenant had called the landlord on one occasion following the issuance of the 1 Month Notice to warn them that the tenant was "totally drunk" and not to confront the tenant while the tenant was in that condition.

### Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

At the beginning of the hearing, I asked the landlord for clarification of the multiple reasons cited in the 1 Month Notice. As it turned out, the landlord and the owner who stated that he was a resident of another province and somewhat unfamiliar with the residential tenancy legislation of B.C. were relying on only a partial understanding or interpretation of section 47 of the *Act*, the relevant portions of which for the purposes of this hearing, are as follows:

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

*(c) there are an unreasonable number of occupants in a rental unit;*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,...*

*(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that...*

*(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

*(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;...*

*(h) the tenant*

*(i) has failed to comply with a material term, and*

*(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

*(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;...*

I outline each of the above provisions upon which the landlord identified grounds for ending this tenancy for cause so as to demonstrate why the landlord's application for all but two of the above reasons were deficient based even on the sole consideration of the landlord's sworn testimony and written evidence.

For example, when asked which "illegal activity" the landlord was referencing with respect to paragraph 47(1)(e) of the *Act*, the landlord said that the tenant was smoking marijuana on the patio and drinking there in contravention of the Agreement. As I noted, neither smoking marijuana nor drinking alcohol is illegal, and the landlord has no evidence of any type that there has been any illegal activity occurring on the property for which the tenant or his associates have been charged.

Although paragraph 47(1)(h)(i) of the *Act* speaks to an alleged breach of a material term, ending a tenancy for cause also requires the landlord to demonstrate that the tenant has failed to comply with a written request to correct the situation within a reasonable period of time following receipt of the written request (paragraph 47(1)(h)(ii) of the *Act*). As the landlord confirmed the tenant's claim that the landlord has not issued any written request to correct the situation, I find that the landlord cannot end this tenancy for cause in accordance with paragraph 47(1)(h) of the *Act*.

Similar problems arise with the landlord's attempt to end this tenancy pursuant to paragraph 47(1)(i) of the *Act*, because the landlord admitted that the tenant has remained living in the rental unit throughout this tenancy and has neither sublet or assigned the premises to someone else. In this regard, I find no merit to the claim by the landlord and the owner that the tenant's failure to abide by the provisions of Section 4 of the Agreement equated to authorization to end the tenancy on the basis of a sublet of the premises by the tenant.

The landlord's attempt to end this tenancy based on paragraph 47(1)(j) of the *Act* is perplexing in that the landlord admitted that the building has not been listed for sale and that the tenant had no contact with prospective purchasers or tenants. As such contact is the only way that a tenancy could be ended pursuant to paragraph 47(1)(j), I can only surmise that the landlord was inattentive to the reasons stated in this, and for that matter many of the sections identified by the landlord in the 1 Month Notice.

Along a similar vein, the landlord and the owner maintained that the tenant's contravention of Section 4 of the Agreement entitled the landlord to end this tenancy for the tenant's allowance of an unreasonable number of occupants in the rental unit. The tenant's contravention of this portion of the Agreement might potentially be considered by the landlord to be a breach of a material term of the Agreement. However, ending a tenancy on that basis would have to emerge through the tenant's failure to correct the situation within a reasonable period of time after having been notified in writing by the landlord that the landlord considered this to be a breach of a material term of their

Agreement. In this case, the landlord made no such claim that this was a material term of their Agreement, and did not issue any written request to the tenant to correct the situation. Even without a written request, there is undisputed sworn testimony and written evidence that the tenant took action to correct this situation, and even made a \$450.00 payment to the landlord for the period of time when the tenant's friend was living there. On this point, I also note that Section 4 of the Agreement does not even state that the parties considered the provision regarding single occupancy of the rental unit to be a material term of the Agreement. This section only states that the tenant was to let the landlord know if somehow else was there when the tenant was not.

Rather than equating a contravention of Section 4 of the Agreement to grounds pursuant to paragraph 47(1)(c) of the *Act* to end this tenancy, an attempt to end a tenancy for allowing an unreasonable number of occupants in a rental unit requires an assessment of the number of occupants allowed in the rental unit and the size of that unit. While this is a studio suite, it is not totally unreasonable that a second person could be sharing occupancy of such a unit with the tenant. Extending this reasoning to enable a third person to reside there as well might very well be unreasonable. However, there is no claim that the tenant allowed any more than one extra person to occupy the rental unit. Even then, this was for a 14 day period, and the tenant took swift action to have that other occupant leave the rental unit when the landlord raised oral concerns with the tenant. As with the other concerns raised by the landlord, the landlord did not send the tenant any written request to correct this situation within a specified period of time. Under these circumstances and based on a balance of probabilities, I find that the landlord has not met the burden of proof required to end this tenancy for cause pursuant to paragraph 47(1)(c) of the *Act*.

What remains for consideration is the landlord's assertion pursuant to paragraph 47(1)(d)(i) and (ii) of the *Act*, that:

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,...*

Although the landlord testified that other tenants complained about the tenant's activities, particularly as they related to smoking, drinking on the patio, and causing

noise in this otherwise quiet building, the landlord produced no written evidence from these other tenants nor did they appear as witnesses at this hearing. As I noted at the hearing, concerns of this nature are generally relayed to tenants by landlords in writing, advising them that a failure to address these concerns may lead to the issuance of a 1 Month Notice leading to the end of their tenancy. This did not occur in this case. Only oral discussions occurred, and the tenant maintained that he addressed these concerns. While it would seem that the landlord and Landlord PRH had good intentions in trying to accommodate the tenant's preference to deal with their concerns through conversations rather than through written correspondence, the landlord's failure to give the tenant a written warning before the 1 Month Notice was issued does lend credence to the tenant's assertion that the landlord acted hastily and without giving the tenant an adequate opportunity to take corrective action. There is at least some evidence that the tenant has taken this corrective action, and is attempting to comply with the concerns raised by the landlord and by other unnamed tenants who live in this building. Based on a balance of probabilities, I find that the landlord has not demonstrated to the extent required that this tenancy should be ended pursuant to paragraph 47(1)(d) of the Act.

For the reasons outlined above, I allow the tenant's application to cancel the 1 Month Notice. Had the landlord provided written evidence from other tenants in this building, had other tenants in this building attended this hearing and given sworn testimony, or had the landlord provided a written warning to the tenant, the outcome of this hearing may have been very different.

The tenant is on alert that a recurrence of the behaviours that the landlord finds objectionable and that gave rise to the landlord's 1 Month Notice may very well lead to the issuance of a subsequent warning letter and if not addressed, another 1 Month Notice. The tenant is reminded of their commitment to abide by the terms of their Agreement. In particular, I note that smoking is not allowed on any portion of this residential property.

As the tenant has been successful in this application, the tenant's application to recover their \$100.00 filing fee from the landlord is allowed. I make no other orders with respect to this tenancy.



Conclusion

I allow the tenant's application to set aside the landlord's 1 Month Notice. That Notice is of no force or continuing effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the amount of \$100.00 to enable the tenant to recover their filing fee for this application. As this tenancy is continuing, I allow the tenant to withhold \$100.00 from a future monthly rent payment. I make no other orders with respect to this application.

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 25, 2019

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Residential Tenancy Branch