



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, AS, LAT, LRE, MNDCT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for orders:

- cancelling a One Month Notice to End Tenancy for Cause dated June 25, 2019 ("One Month Notice"),
- cancelling the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"),
- allowing an assignment or sublet;
- authorizing the Tenant to change the rental unit lock;
- suspending or restricting the Landlord's right to enter; and
- for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement,

The Tenant, a lawyer, R.H., for the Landlord ("Lawyer"), and an agent for the Landlord (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

Both Parties stated that they had received some of the other Party's evidence late, and

the Lawyer asked that the Tenant's late evidence be dismissed. I advised the Parties to alert me if the other pointed out evidence that the Party had not had time to consider. Further, I have not considered evidence submitted to the RTB three days or less prior to the hearing.

I advised that the Parties' their respective testimony in the hearing was also evidence before me.

In the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated several matters of dispute on the Application, the most urgent of which are the applications to set aside a One Month Notice and a 10 Day Notice to end tenancy. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I, therefore, will only consider the Tenant's request to set aside the One Month and 10 Day Notices at this proceeding, and recovery of the Application filing fee. Therefore, the Tenant's other claims are dismissed, with leave to re-apply.

#### Issue(s) to be Decided

- Should the 10 Day Notice be confirmed or cancelled?
- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application Filing Fee?

#### Background and Evidence

The Parties agreed that the fixed term tenancy was to run from May 1, 2019 to April 30, 2020, with a monthly rent of \$4,100.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$2,000.00, and no pet damage deposit.

The Parties agreed that the Landlord served the Tenant with the One Month Notice on June 25, 2019, by posting it on the door of the rental unit. The Landlord submitted a photograph in his evidence with a picture of an envelope taped to the door, with the Tenant's name and the date on it, and the front page of a local newspaper dated June 25, 2019 in the photograph.

In the hearing, the Lawyer said that in regard to the 10 Day Notice, the Tenant has

paid the rent owing, except for \$200.00, and that the Landlord is focused on confirming the One Month Notice. I have not a finding on the amount of rent that may be owing by the Tenant to the Landlord.

The One Month Notice set out the Landlord's grounds for the eviction, which the Lawyer confirmed in the hearing, as follows:

The Tenant had allowed an unreasonable number of occupants in the unit/site.

The Tenant or a person permitted on the residential property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

The Tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:

- adversely affects or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

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

The tenant has assigned or sublet the rental unit/site without the Landlord's written consent.

On review of the One Month Notice, I note that it is signed, dated, states the rental unit address, states the vacancy effective date, the grounds for ending the tenancy, and is in the approved form.

#### Unauthorized Occupants

The Landlord stated the following on the One Month Notice:

Despite being issued a breach letter by the landlord on May 29, 2019 and given a

reasonable opportunity to correct this breach, the tenants are in continual breach of a material term of the tenancy agreement by allowing non-permitted occupants to occupy the Rental Property. Further or in the alternative, they have subleased the Rental Property without the landlord's written consent and they physically assaulted the landlord and another co-tenant on June 24, 2019.

The Landlord submitted copies of advertisements posted by the Tenant seeking renters for the the Landlord's property. The Lawyer said that this is evidence that the Tenant was subleasing parts of the rental unit, rather than hosting friends, relatives or work colleagues. The Landlord also submitted photographs of the Tenant moving a refrigerator into the basement of the rental unit.

During the hearing, the Tenant said that he objects to everything the Lawyer said. He said that the rental unit is a big house and that he has been entertaining guests or business associates there. He said that the addendum to the tenancy agreement clearly says that he can have weekend visits with his son, guests, and overseas visitors. He said "you can't name a guest eight months ahead of time."

The first Addendum to the tenancy agreement submitted by the Tenant has the following term:

2. Only the persons and their guests listed on the application are permitted to reside in this premise. **No Airbnb, child care nor maternity centre** is allowed. Landlord will terminate this rental agreement immediately if tenants are found to be in breach.

[emphasis in original]

The names on the Application include the Tenant, S.J., and another tenant, S.P., [S.] a 10-year old, guests, overseas visitors, and work associates temporarily.

The Lawyer submitted a letter dated May 29, 2019 ("Letter"), in which another lawyer for the Landlord wrote to the Tenant about the above noted clause of the tenancy agreement addendum. This Letter included the following:

The third page of the application form submitted to the landlord listed ['S.'] along with 'guests', 'overseas visitors' and 'work associates temp.' as the only proposed occupants of the Rental Property other than the principal tenants (collectively, the '**Permitted Occupants**').

Following a recent inspection by our client, it was confirmed that occupants other than Permitted Occupants are residing at the Rental Property. The landlord had previously suspected this to be the case following its discovery of listings on [local website], advertising the Rental Property for rent.

[emphasis in original]

The Letter goes on to advise the Tenant that it serves as notice that his allowing any occupants other than the Permitted Occupants to reside in the rental unit is a breach of the material term of the tenancy agreement. The Letter then states:

You are requested to remove all occupants other than Permitted Occupants from the Rental Property **within twenty-one (21) days** of the date of this letter. If you do not remedy this situation within such period, please be advised that the landlord will issue you a One-Month Notice to End Tenancy in accordance with the Act.

[emphasis in original]

The Lawyer said the Addendum does not permit additional occupants residing there; it says no AirBnB, no guests or unauthorized occupants are to live there. Despite this, she said, the Tenant allowed unauthorized occupants to reside in the rental unit for 4½ months.

The Tenant said that his guests could not have stayed in the rental unit for 4½ months, because the tenancy only started in May 2019 – not even four months ago.

#### *Impact on Landlord's Insurance*

The Lawyer said that “as the warning letter states, the tenant has allowed an unreasonable number of occupants, and has significantly interfered with or jeopardized the Landlord's insurance coverage, which is a risk to the property.” She said this is a breach of a material term of the tenancy agreement and that the Tenant has had plenty of time to abide by tenancy agreement.

The Lawyer said there was no written request from the Tenant for additional occupants in the rental unit, and that the Landlord learned by surprise that additional people were living there. The Lawyer said that the Landlord's insurance on the residential property was cancelled, because there were too many people living in the rental unit. The Lawyer submitted a copy of a letter the Landlord received from the insurer that is

entitled "Notice of Cancellation". This letter says that the Landlord's insurance on the residential property is cancelled as of August 1, 2019.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Based on the documentary evidence before me, which was submitted on time, and on the testimony of the Parties at the hearing, I find it more likely than not that the Tenant has sublet parts of the rental unit without the Landlord's written permission, and in violation of the tenancy agreement.

Section 34 of the Act states that a tenant must not assign a tenancy agreement or sublet a rental unit without the landlord's written consent. The Tenant did not provide any evidence that he made a written request for or received written consent of the Landlord prior to housing unauthorized occupants.

As the Lawyer pointed out, the Landlord's insurer will no longer insure the rental unit, given the total number of occupants in the rental unit, based on the Tenant having subleased the basement. I find that this has caused the Landlord to lose insurance coverage of the property. I find this jeopardized a lawful right or interest of the Landlord, which is a ground of eviction under section 47 of the Act and authorizes the issuance of the One Month Notice.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet the burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

### Conclusion

I have found the One Month Notice to End Tenancy for Cause to be valid. I have not made any findings on the Tenant's other claims. I dismiss the Tenant's monetary claim with leave to reapply, and his other claims are dismissed without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 20, 2019

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Residential Tenancy Branch