



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      TENANT: CNC  
                                 LANDLORD: OPC FFL

### Introduction

This hearing dealt with the applications from both the tenant and the landlords pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlord's One Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*.

The landlords applied for:

- an Order of Possession pursuant to section 55 of the *Act*; and
- the recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both landlords attended the hearing, with landlord Y.Z. speaking on behalf of the landlords, and herein referred to as "the landlord". The landlords attended with a translator and a witness.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package, sent by Canada Post registered mail on August 9, 2019 and evidence left in the landlords' mailbox on September 16, 2019. Therefore, based on the undisputed testimony of the parties, I find that the landlords were served with the tenant's documents for this hearing in accordance with sections 88 and 89 of the *Act*. The tenant testified that she did not receive the landlord's Notice of Dispute Resolution Proceeding package and evidence.

The landlord testified that he served the tenant by Canada Post registered mail on September 16, 2019 and provided the registered mail tracking number during the hearing. During the hearing, I accessed the Canada Post website which indicated that two notices had been left for pickup of the package. The tenant testified that she had been checking the mailbox shared between her and the landlords, but she did not receive the notices. The tenant testified that she had received other mail.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

*Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

In this case, although the tenant testified that she did not receive the registered mail notices, she failed to present any evidence to contradict the deeming provisions of Section 90 of the *Act* and Policy Guideline 12. Therefore, I find that the tenant was served with the landlords' Notice of Dispute Resolution Proceeding and evidence on September 21, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

#### Preliminary Issues - Procedural Matters

I explained to the parties 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to

prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Is the landlord entitled to recover the cost of the filing fee from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. The parties confirmed their understanding of the following terms of the tenancy agreement:

- This month-to-month tenancy began October 1, 2016.
- Current monthly rent of \$800.00 is payable on the first day of the month.
- The tenant paid a security deposit of \$400.00 at the beginning of the tenancy, which continues to be held by the landlords.
- The rental unit consists of a bachelor suite with a bathroom and kitchen, accessed by a separate entrance through the yard, estimated by the tenant as approximately 600 square feet in size.

A copy of the One Month Notice dated July 31, 2019, submitted into evidence, states an effective move-out date of September 1, 2019. On page 2 of the One Month Notice the following boxes were checked off as the reasons for seeking an end to 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:*

- *Put the landlord's property at significant risk.*

*Tenant or a person permitted on the property by the 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.*

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

The landlord has provided the following details in the "Details of Cause" section of the notice:

*[The tenant] has been sublet the rental suite to at least 18 persons without landlord's consent since August 2017, the ad has been posted on Airbnb which title is "Cozy Bungalow the perfect getaway" since 2017. This situation puts Landlord's property at significant risk especially safety risk to children, and extra expenses of utilities. It disrespects both contract and landlord.*

(Transcribed as written)

The tenant confirmed that the One Month Notice was personally served to the tenant by the landlords on July 31, 2019.

The tenant filed an Application for Dispute Resolution on August 6, 2019 to dispute the Notice.

The landlord testified that they discovered the tenant had been subletting the rental unit through Airbnb as they found an Airbnb listing with pictures of the rental unit and a host with the same first name as the tenant. The landlord called their neighbour to provide witness testimony that she had seen many different cars and strangers at the rental unit. The witness stated that having strangers coming and going next door was a concern given that the previous year police had attended at the rental unit during the night due to a break-in. The tenant confirmed that she had called police on one occasion when someone had tried to break-in to her rental unit as well as the outside shed on the property.

The landlord testified that he confronted the tenant about using the rental unit for Airbnb by text message, and that the tenant responded by text message stating that she would remove the listing.

The tenant testified that the Airbnb listing was not hers, but belonged to her friend, who shared the same first name as her, and had an Airbnb unit in the neighbourhood. The tenant testified that the friend used pictures of the tenant's rental unit for their Airbnb listing. The tenant contended that she had lots of friends that would visit her at the rental unit and that in July, she had a couple house-sit for her while she was away. The

tenant testified that she only agreed to the landlord to remove the Airbnb listing because he was so persistent about the issue that she felt she had to “tell him whatever he needed to hear”.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy for any of the reasons set out under that section and on page 2 of the One Month Notice to End Tenancy for Cause form.

Section 47 of the *Act* provides that upon receipt of a One Month Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant was in receipt of the landlord’s One Month Notice on July 31, 2019. The tenant filed an application to dispute the notice on August 6, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

In this matter, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has met the burden to prove the reasons for issuing the One Month Notice on the grounds that the tenant sublet the rental unit without written consent of the landlord, as explained below:

- The tenant acknowledged that pictures taken of her rental unit were used in an Airbnb rental ad, however, the tenant testified that the Airbnb listing claimed by the landlord to have been used by the tenant to sublet the rental unit was a listing for a friend’s Airbnb listing located nearby. I find the tenant’s explanation to lack credibility as it is not reasonable to believe that the friend would use pictures of the tenant’s

rental unit to advertise their own Airbnb listing, as this would be a serious misrepresentation. Further, the tenant provided no corroborating evidence to support her testimony. The tenant could have called upon the friend to provide witness testimony at the hearing or to provide a written statement in support of the tenant's testimony.

- The tenant claimed that her first name was noted as the “host” in the Airbnb listing because her friend has the same first name. I find the tenant's explanation to lack credibility given the tenant submitted no corroborating evidence to support her testimony.
- The landlord testified that when he confronted the tenant via text message about the tenant's use of the rental unit as an Airbnb, the tenant replied to the landlord's text message by agreeing to remove the Airbnb listing. The tenant acknowledged that she agreed to this in the text message to the landlord, however she testified that she only did so as the landlord was very concerned and pressing about the matter, and so she told him “whatever he needed to hear”. I find the tenant's explanation to lack credibility since the tenant would be unable to remove the Airbnb listing if it was not her listing, therefore, the landlord would continue to see the active listing and the situation would remain unresolved.
- The tenant referred to copies of her bank records and income tax submissions submitted into evidence to show she has not received any payments for Airbnb services, or claimed any income received for Airbnb services, in support of her claim that she has not been operating an Airbnb. I find that the tenant only submitted a copy of a July 2019 bank record as the file marked as “Junebankrecord” was incorrectly labelled and contained only a duplicate picture of her witness letter regarding service of documents. The July 2019 bank record has no name noted on it or any information to connect the record to the tenant. The tenant submitted copies of her 2016, 2017 and 2018 income tax submissions, which clearly provide the tenant's name at the top of the page. I find that this evidence is not conclusive that the tenant did not operate an Airbnb, as this evidence can only demonstrate that the tenant did not receive payment into this particular unidentifiable bank account in July 2019, but does not rule out that the tenant received payment through alternate means, such as PayPal, or another bank account. Further, the tenant's income tax statements only demonstrate that the tenant did not report any employment or business earnings on her income tax submission.

Therefore, for the reasons provided above, I find that grounds for the landlord issuing the One Month Notice have been proven. Therefore, the One Month Notice is of full force and effect, and the tenant's application is dismissed without leave to reapply.

Section 55(1) of the *Act* states that if a tenant makes an application to dispute a notice the arbitrator must grant an Order of Possession if the notice complies with the *Act* and the tenant's application is dismissed. As I have made a finding that the One Month Notice complies with section 52 of the *Act* and the tenant's application to the cancel the One Month Notice is dismissed, the landlord must be granted an Order of Possession.

As the effective vacancy date of the notice has now passed and as the tenant confirmed in the hearing that she had not yet paid rent for the month of October 2019, this Order of Possession is effective two (2) days after the landlord serves this Order upon the tenant.

As the landlord was successful in obtaining an Order of Possession, I find that the landlord is entitled to recover the cost of the filing fee from the tenant. I order the landlord to retain \$100.00 from the security deposit in full satisfaction of the recovery of the filing fee.

#### Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after the landlord serves the Order on the tenant. The landlord must serve this Order on the tenant as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is order to retain \$100.00 from the security deposit in full satisfaction of the recovery of the filing fee.

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: October 01, 2019

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Residential Tenancy Branch