



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated October 26, 2019 (1 Month Notice), and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The tenant, the landlord and the spouse of the landlord attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The landlord confirmed that they had the opportunity to review the documentary evidence from the other party prior to the hearing. The landlord's evidence was excluded in full as the landlord neglected to serve the tenant with their documentary evidence as required by the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). I find the landlord was sufficiently served under the Act.

### Preliminary and Procedural Matters

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated two matters of dispute on one application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 1 Month Notice at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties were also advised that the decision will be emailed to both parties.

### Issue to be Decided

- Should the 1 Month Notice cancelled under the Act?

### Background and Evidence

A copy of a few pages of the tenancy agreement was submitted in evidence. The entire tenancy agreement was not submitted in evidence. The parties agreed that the tenancy began on August 1, 2016. The parties agreed that current monthly rent is \$890.00 per month and is due on the first day of each month.

There is no dispute that the tenant was served with the 1 Month Notice. The tenant filed their application to cancel the 1 Month Notice on November 5, 2019. On the 1 Month Notice, the landlord has alleged three causes, which are:

1. Tenant has allowed an unreasonable number of occupants in the unit/site.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
3. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord wrote in the Details of Cause portion of the 1 Month Notice the following:

#### TENNANT HAS SUBLET APT WITHOUT PERMISSION

Regarding the first cause listed above, the landlord testified that the tenant has a roommate SG (roommate) and that the tenant did not have consent of the landlord to have a roommate. The parties were advised that one roommate is not an unreasonable number of occupants under the Act and as a result, the first cause was dismissed during the hearing due to insufficient evidence.

Regarding the second cause, the landlord was advised that the landlord could not be successful arguing a breach of a material term without having submitted documentary evidence such as the entire tenancy agreement stating what the material term of the tenancy agreement was, and the written notice to the tenant, which is the second part of the second cause listed. As a result, the parties were advised that the landlord would

not be able to convince the undersigned regarding the second cause listed without any documentary evidence submitted by the landlord.

Regarding the third cause, the landlord confirmed that the landlord issued the 1 Month Notice due to the tenant having a roommate that was not approved by the landlord. The landlord clarified that they were not alleging that tenant had vacated the rental unit and had assigned or sublet the rental unit. As a result, the parties were advised that the landlord has misapplied the third ground, which I find does not relate to a roommate living arrangement. A roommate is not subletting or assigning a tenancy under the Act.

Given the above, the parties were advised that the landlord provided insufficient evidence to support any of the 3 causes listed on the 1 Month Notice.

### Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice had an effective vacancy date of November 26, 2019, which would automatically correct to November 30, 2019 under section 53 of the Act. The tenant disputed the 1 Month Notice on November 5, 2019, which is within the ten-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord alleges the three causes noted above; however, as indicated above, I find the landlord has issued a 1 Month Notice related to the tenant having a roommate, which is not subletting or assigning a tenancy under the Act. Furthermore, I find that one roommate is not an unreasonable number of occupants under the Act. Finally, the landlord has attempted to allege breach of a material terms which I find the landlord has not met the burden of proof without a full copy of the tenant agreement and a copy of the written direction by the landlord to the tenant to advise of the breach of the material term. Accordingly, I find the landlord has failed to prove that any of the three causes are valid and as a result, **I cancel** the 1 Month Notice due to insufficient evidence from the landlord.

As the filing fee was waived, I do not need to consider the filing fee further.

**I ORDER** the tenancy to continue until ended in accordance with the Act, pursuant to section 62(3) of the Act.

Conclusion

The tenant's application is successful. The 1 Month Notice issued by the landlord dated October 26, 2019, is cancelled. The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to the parties as indicated above.

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: December 20, 2019

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Residential Tenancy Branch