



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NVISION PROPERTY  
MANAGEMENT and [redacted to protect privacy]

## **DECISION**

Dispute Codes      FFT, CNC

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47; and,
- authorization to recover the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Property Manager TN attended on behalf of the landlord. Tenant MF attended on his behalf.

The landlord's agent confirmed receipt of the tenant's application and evidentiary package for Dispute Resolution by registered mail on December 26, 2019. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*. The landlord is found to have been served with all the documents.

The tenant confirmed receipt of the landlord's evidentiary package sent by registered mail on February 16, 2020. The tenant is found pursuant to section 88 of the *Act* to have been served with this package in accordance with the *Act*. Canada Post tracking details are listed on the first page of this decision.

## Issues

Is the tenant entitled to cancel a One Month Notice pursuant to section 47 of the *Act*?

Is the tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Should the tenant not be successful in having the One Month Notice cancelled, is the landlord entitled to an order of possession pursuant to Section 55?

## Background and Evidence

The tenancy began May 1, 2017 as a one-year fixed term tenancy, then reverted to a month to month tenancy. Rent is \$1845.00 per month and a security deposit of \$900.00 is held in Trust by the landlord.

The landlord issued the One Month Notice on December 10, 2019, with an effective date of January 31, 2020. The landlord testified that the notice was sent registered mail to the tenant.

The grounds stated for ending the tenancy were the following:

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

The landlord's agent provided the following testimony. He testified that the rental unit was taken over by NVP in 2018. He testified that the tenant had signed a twelve - month fixed term tenancy with the previous landlord and that the tenant was no longer a resident of the property.

The landlord's agent testified that the management company visited the property on December 3, 2019 and realized that the tenant was sub-letting the rental unit to other occupants. The landlord testified that he had obtained a copy of the tenancy agreement from one of the occupants confirming that the tenant was representing himself as the landlord. The landlord's agent testified that the tenant had breached a material term of the tenancy and had sub-let the rental unit without permission from the landlord.

The landlord's agent testified that the tenant had not obtained the approval from the landlord or Property Management company to sublet the rental unit.

The tenant testified that he always paid the rent on time and had obtained the written approval from the previous landlord- management company in VPM, in 2017 to sublet the unit and that his tenancy was valid and continued month to month. The tenant

submitted a copy of this approval into evidence in the form of a letter dated June 15, 2017 and signed by both the previous landlord and tenant.

The tenant testified that the reason for the eviction was that the Property Management Company wanted to demolish and renovate the rental units in the building and evict himself and the other tenants in the rental unit.

The tenant testified that the landlord was refusing to invest further in the rental unit by carrying out the necessary repairs. The tenant testified that he has carried out the repairs in the rental unit since the commencement of the tenancy. He testified that he undertook repairs in the upstairs bathrooms in the unit. He testified that the toilet was leaking, and the floors to the bathroom required replacing due to rot. The tenant produced receipts confirming that he had employed contractors to carry out the work and testified that it had cost him \$2,200.00 to carry out the repairs.

The landlord's agent testified that they had received emails from the tenant regarding the repairs, but he had been waiting for approval from management. The landlord's agent testified that the tenant's quotes were expensive. He testified that the tenant had not provided them the opportunity to undertake the work. The landlord's agent testified that the tenant was reimbursed \$1200.00 for the leaking toilet and repairs to the bathroom.

The landlord's agent testified that the tenant had another residence in Victoria and did not reside in the rental unit, and his registered mail had been returned on a few occasions.

The tenant responded and testified that the sub-tenancy had not been an issue until the new Property Management company took over the lease. The tenant testified that his property in Victoria is rented to other tenants, his nature of business, means that he travels extensively and comes to the rental unit every few months. He maintained that he had an "interest" in the unit as his personal possessions were physically in the rental unit and he regularly picked up his mail.

### Analysis

Section 47(1)(i) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if 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 of the *Act*.

Section 47(4) states a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 47(5) says that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.

The tenant has made an application for an order to cancel the One Month Notice. The tenant acknowledged receipt of the landlord's One Month Notice on December 16, 2019 and filed an application to dispute the One Month Notice on December 24, 2019 within the ten days of receipt. Therefore, I find that the tenant may dispute a One Month Notice pursuant to section 47 of the *Act* and is within the prescribed time period.

Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the notice to end the tenancy is valid. This means that the landlord must prove, that it is more likely than not, that the facts stated on the notice to end tenancy are correct.

#### Assignment and subletting

34 (1) the Unless landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

I have reviewed the letter from the previous management company VPM dated June 15, 2017 granting approval to "sublet part or all of the home, at his discretion" I am of the opinion that this letter constitutes written approval allowing the tenant to sublet the rental unit. The letter dated June 15, 2017 from the previous landlord VPM gives the tenant permission to sublet the rental unit and undertake any necessary repairs that are required.

As such, I find that the landlord has failed to provide evidence that they have cause to end the tenancy because the tenant has assigned or sublet the rental unit without written permission of the landlord.

Accordingly, I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

As the tenant as been successful in this application. I grant the tenant the \$100.00 filing fee for this application, to be deducted from the following month's rent.

Conclusion

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

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: March 21, 2020

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Residential Tenancy Branch