



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 25, 2020 ("1 Month Notice"), pursuant to section 47.

The landlord, the landlord's lawyer, the tenant, and the tenant's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her lawyer had permission to speak on her behalf. The tenant confirmed that his lawyer had permission to speak on his behalf. The landlord called her husband, "witness DB" as a witness at this hearing, who was excluded from the outset. Both parties had equal opportunities to question this witness. This hearing lasted approximately 82 minutes.

The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord's lawyer confirmed that no evidence was submitted by the landlord for this hearing, only for a future hearing in November 2020. The tenant's lawyer confirmed that the evidence was only recently received within the last week and the tenant was not prepared to respond to it. I notified both parties that I could not consider the landlord's evidence because it was not provided with this application, only for a future unrelated application for damages. Both parties confirmed their understanding of same.

Both parties agreed to proceed with this hearing and confirmed they had no objections. Both parties confirmed that they did not want to adjourn this hearing, or have it heard together with the landlord's future application for monetary damages, scheduled for November 2020.

The tenant confirmed receipt of the landlord's 1 Month Notice on June 25, 2020, by email and later by mail. The landlord confirmed service on the above date, using the above methods. Both parties agreed that the notice indicates an effective move-out date of July 25, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on June 25, 2020.

### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

Both parties agreed to the following facts. This tenancy began on January 1, 2015. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Monthly rent in the amount of \$3,000.00 is payable on the first day of each month. A security deposit of \$3,000.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant vacated the rental unit with his wife, who is also a tenant, on March 23, 2020. The tenant and his wife are currently out of the country on the tenant's three-year work assignment. Two new subtenants are currently residing in the rental unit.

Both parties agree that the landlord issued the 1 Month Notice for the following two reasons:

- *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park; and*
- *Tenant has assigned or sublet the rental unit/site without the landlord's written consent.*

The landlord stated the following facts. The tenant provided false information to his subtenants that he was the landlord for the rental unit and the landlord owner was the mortgage holder. The tenant sublet the rental unit without the landlord's verbal or written consent. Section 2.5 of the parties' tenancy agreement indicates that the tenant cannot sublet without the landlord's consent. The landlord gave permission for the

tenant's friend to stay at the rental unit while the tenant was working out of the country, but that friend backed out, according to the tenant. The tenant stated that he wanted to vacate the rental unit and he would help find new tenants for the landlord, just like the landlord was looking for new tenants, since word-of-mouth was best. The tenant then decided to stay at the rental unit for another five years. The tenant apologized to the landlord after the landlord found out that the tenant sublet the rental unit to new subtenants.

Witness DB stated the following facts. He never gave permission to the tenant, nor did the tenant ask, to sublet the rental unit, verbally or in writing. The tenant wanted to live in the rental unit for another five years. There were no text messages regarding subletting the rental unit. The landlord discovered the subtenants living at the rental unit after three months, when they noticed their car parked there. The tenant indicated first that he wanted to move out and then decided he wanted to stay. On June 15, 2020, a conversation occurred between witness DB and the tenant, where the tenant sent witness DB paperwork after he found out about the subtenants. He never told the tenant that he wanted to be an anonymous owner of the rental unit. The written tenancy agreement indicates that the tenant cannot sublet the rental unit without the landlord's consent. The subtenants are repairing the rental unit, not the tenant.

The tenant stated the following facts. He has an ongoing work project out the country, for a period of three years from this hearing date, which the landlord is aware of. He intends to return to the rental unit after the project is over. He has his belongings, car and business items at the rental unit. He has been maintaining and repairing the rental unit, not the landlord. He told the landlord in text messages that he wants to rent the unit for another five years. Witness DB told the tenant verbally and in text messages that he has permission to sublet the rental unit. The text messages state that the tenant was making repairs and improvements to the rental unit. They also indicate that the tenant was looking for potential renters for the unit. At the meeting at the landlord's house, witness DB knew it was too expensive for the tenant to leave the rental unit empty for three years while he is completing his project. This is a longer period of time than the one year that the tenant left for previously.

The tenant's lawyer indicated witness DB is a landlord under section 1 of the Act. He maintained that while it is not clear in the parties' text messages, the tenant referenced potential renters to witness DB, who responded as "ok" and although a potential renter backed out, the tenant kept looking and later sublet the rental unit.

## Analysis

According to subsection 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. The tenant received the 1 Month Notice on June 25, 2020 and filed his application to dispute it on June 29, 2020. Therefore, he is within the ten-day time limit under the *Act*.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason since I find that the tenant sublet the rental unit without the landlord's written permission. As I have found one of the reasons to be valid, I do not need to examine the other reason.

Both parties agreed that the tenant sublet the rental unit to subtenants and that he intends to return to the rental unit after his work assignment. The tenant has left his possessions at the rental unit. Both parties agree this was not an assignment of rights from the tenant to the subtenants. The tenant provided a copy of the sublease agreement between the tenant and the subtenants.

I find that the landlord and landlord DB, who both confirmed that they are co-owners of the rental unit and acted as landlords during this tenancy, are landlords under section 1 of the *Act* (collectively "landlords").

Section 34 of the *Act* states the following:

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

Residential Tenancy Policy Guideline 19 states the following, in part (my emphasis added):

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) allow a tenant to assign their tenancy agreement and to sublet their rental unit or manufactured home site. In most circumstances, **unless the landlord consents in writing, a tenant must not assign or sublet** (there are exceptions to this for manufactured home parks). **A tenant who assigns their tenancy agreement, or sublets their rental unit, without obtaining the written consent of the landlord, may be served with a One Month Notice to End Tenancy (form RTB-33), pursuant to the Legislation.***

I accept the affirmed testimony of both landlords. I find that the landlords did not give written consent to the tenant to sublet the rental unit. I find that text messages are not written consent under the *Act*.

I also find that the text messages provided by the tenant do not show that the landlords provided written consent for the tenant to sublet the rental unit. I find that the text messages indicate that the tenant wanted to continue his tenancy as a tenant for another five years, which the tenant agreed he said. They also reference the tenant's wishes to make repairs to the property, to which the landlords agreed. I did not find this agreement to be consent for the tenant to sublet the rental unit, as indicated by the tenant.

While the text messages are unclear in some parts, as noted by the tenant's lawyer, since they refer to other potential renters possibly renting the property, the tenant indicated that these other renters did not work out. I also note that the tenant initially wanted to vacate the rental unit and I accept the landlord's explanation that the tenant was helping her to find new tenants once the tenant vacated, not subtenants.

I find that the landlords were initially unaware that subtenants were residing at the rental unit and when they discovered this, they confronted the tenant, who provided documentation confirming same. I find that the landlords acted on this information by issuing a 1 Month Notice to the tenant to end his tenancy for subletting without written consent.

Section 55(1) of the *Act* reads as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Residential Tenancy Policy Guideline 19 states the following, in part (my emphasis added):

*The sub-tenant's contractual rights and obligations are as set out in the sublease agreement. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, **if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.***

I find that the landlord's 1 Month Notice complies with section 52 of the Act. I dismiss the tenant's application to cancel the landlord's 1 Month Notice, dated June 25, 2020. Accordingly, I find that the landlord is entitled to an Order of Possession against the tenant and any other occupants, including the subtenants, effective at 1:00 p.m. on July 31, 2020, the end of the month.

### Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective at 1:00 p.m. on July 31, 2020. 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.

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 27, 2020

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Residential Tenancy Branch