



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sutha Holdings Ltd. and [tenant name  
suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, PSF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- An order for the Landlord to provide services and facilities required by the tenancy agreement or law.

I note that section 55 of the Act requires that when a tenant submits an Application 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's partner G.C., the Tenant's support person S.W., the Tenant's advocate P.L. (the Advocate), the Landlord S.N. (the Landlord) and the Landlord's agent R.O. (the Agent), all of whom provided affirmed testimony. The Landlord and Agent acknowledged service of the Application and Notice of Hearing and raised no concerns regarding service or timelines. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to the Advocate at the email address provided in the hearing. At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

### Preliminary Matters

The parties acknowledged receipt of each other's documentary evidence and neither party raised concerns regarding service or timelines. As a result, I have accepted all of the documentary evidence before me from both parties for consideration.

At the outset of the hearing the Advocate stated that the Tenant wished to withdraw their Application for an order for the Landlord to provide services or facilities. No objection was raised by the Landlord or their Agent. I therefore granted the Tenant's request and the hearing proceeded based only on the Tenant's Application seeking cancellation of the One Month Notice.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant's Application is dismissed or the One Month Notice is upheld, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

### Background and Evidence

Two separate tenancy agreements were submitted for my review. The first tenancy agreement, signed by the parties on February 1, 2018, for a tenancy commencing that same date, states that rent in the amount of \$655.00 is due on the first day of each month and that a \$300.00 security deposit was paid. The second tenancy agreement dated July 21, 2020, states that rent in the amount of \$600.00 is due on the first day of each month, that the \$300.00 security deposit has already been paid, and contains largely the same terms and conditions, including clauses that the Tenant not assign or sublet the rental unit without permission and that no persons other than the Tenant or their family members as set out in the tenancy agreement, shall occupy the rental unit.

The parties agreed that these are the correct terms of the tenancy agreements entered into and that rent is currently \$700.00 per month.

The Landlord argued that the Tenant has breached a material term of the tenancy agreement by allowing their partner, G.C. to occupy the rental unit with them and has refused to enter into a new tenancy agreement listing G.C. as an occupant or tenant of the rental unit. The Landlord and agent stated that two letters were sent to the Tenant requesting that they make arrangements to enter into a new tenancy agreement listing G.C. as an occupant but the Tenant has not done so. As a result, the Landlord and Agent stated that the One Month Notice was served on the Tenant by posting it to the door of their rental unit on September 15, 2020.

Although the Tenant acknowledged receipt of the One Month Notice from their door, they could not recall the date it was received.

The One Month Notice in the documentary evidence before me, signed and dated September 15, 2020, has an effective date of October 31, 2020, and states that it has been served because the Tenant has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable period of time after having been given written notice to do so.

Under the detail of cause section, the Landlord and/or the Agent stated the following:

**Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.**

**Details of the Event(s):**

It has been observed as well as admitted by both Sylvia Keck and Garrett Chelsberg that Garrett lives with Sylvia and is not on her lease or willing to work with management by signing a new agreement with Garrett on it.  
#1 Management spoke with Sylvia on July 22/2020 Sylvia said Garrett did not reside with her. Management reminded Sylvia everyone needed to be on lease.  
#2 Management spoke with Sylvia & Garrett on July 29/2020 and asked to sign new lease agreement with Garrett on it. As Garrett admitted to residing there saying old management let him without being on lease. There was no findings in file.  
#3 Bernadette Chaboyer spoke to Sylvia Garrett & Garrett's sister Shirley on August 31/2020 and again asked Sylvia and Garrett to sign new lease agreement.  
#4 Management delivered a letter as a 4th and final warning on September 13/2020 asking Sylvia & Garrett to come down to office and we can resolve issue if not it will result in eviction. Sylvia yelled through the door that she was not going to open the door it as a result accepted it then under the door.

The Tenant and their Advocate denied that the terms relied on by the Landlord for issuance of the One Month Notice are material terms of the tenancy agreement. The Advocate also argued that that Landlord has known that G.C. has resided in the rental unit since 2010, and it is therefore unreasonable for the Landlord to now seek an end to the tenancy based on his presence. The Tenant also denied receipt of any written notice advising them that they had breached a material term of the tenancy agreement, or the nature of the breach, giving them a timeline for resolution and advising them that if they did not comply, their tenancy would be ended.

### Analysis

Based on the evidence and testimony before me for consideration, I am satisfied that the One Month Notice was posted to the door of the rental unit on September 15, 2020, and I deem it received three days later on September 18, 2020, pursuant to section 90(c) of the Act.

Section 47(1)(h) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Policy Guideline 8 defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Policy Guideline 8 also states that it falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

Although I agree that the tenancy agreement prohibits assigning or subletting the rental unit without the Landlord's consent and states that no person or persons other than tenant and their family members, as listed in the tenancy agreement, are permitted to occupy the rental unit, it does not indicate that these terms are material terms of the tenancy agreement and the Tenant disputed at the hearing that they were. As a result, I am not satisfied by the Landlord, who bears the burden of proof in this matter pursuant to rule 6.6 of the Rules of Procedure and Policy Guideline 8, that these are in fact material terms of the tenancy agreement.

Further to the above, the Tenant denied being properly advised by the Landlord or their agents in writing that there is a problem, that the Landlord believes the problem is a breach of a material term of the tenancy agreement, that the problem must be fixed by a reasonable deadline included in the letter, and that if the problem is not fixed by the deadline, the party will end the tenancy, as required by Policy Guideline 8 and section 47(1)(h) of the Act. Although the Landlord and Agent stated that two letters were sent, neither letter was provided for my review or consideration and the letter the Landlord and Agent read aloud to me during the hearing did not contain the required information set out in Policy Guideline 8.

Based on the above, I am not satisfied that the terms of the tenancy agreement allegedly breached by the Tenant as set out in the One Month Notice are in fact material terms of the tenancy agreement. In any event, even if I had been satisfied that they were material terms, which I am not, I am not satisfied that the Landlord gave proper

written notice of the breach prior to the issuance of the One Month Notice as required by the Act and Policy Guideline 8. As a result, I therefore grant the Tenant's Application and cancel the One Month Notice.

Despite the above, the parties should be aware that the Landlord remains at liberty to seek enforcement of any term of the tenancy agreement, including the above noted terms regarding assignment, subletting, and additional occupants, pursuant to section 62(3) of the Act, and that should an order be granted to the Landlord enforcing those terms, the Landlord would be at liberty pursuant to section 47(1)(l) of the Act, to seek an end to the tenancy if the tenant failed to comply.

### Conclusion

I order that the One Month Notice for breach of a material term of the tenancy agreement dated September 15, 2020, is cancelled and therefore order that the tenancy continue in full force and effect until it is ended by one of the parties 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 Act.

Dated: November 23, 2020

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Residential Tenancy Branch