



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant, K.N. attended the hearing via conference call and provide affirmed testimony with the help of her assistant, H.J. The tenant, K.N. did not attend and was not represented. The landlord attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted 14 documentary evidence files via Canada Post Registered Mail on February 12, 2021. Both parties also confirmed the landlord served the tenants with the 6 submitted documentary evidence files in person on April 20, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Extensive discussions over a 70 minute period resulted in the hearing being adjourned. Both parties were advised that a new notice of adjournment letter would be sent to the

confirmed addresses of both parties. Both parties were also cautioned that no new evidence was to be submitted nor would it be accepted.

On September 17, 2021 the hearing was reconvened with only the landlord. The hearing was paused until 10 minutes past the start of the scheduled hearing time. The tenants did not attend or participate in the adjourned hearing. A review of the Residential Tenancy Branch File shows that both parties were provided with the notice of adjournment detailing the time, date and access codes to call into the conference call hearing. The hearing resumed in the absence of the tenants and concluded after 56 minutes.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenants entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2020 on a fixed term tenancy ending on March 31, 2021 and then thereafter on another fixed term as per the submitted copy of the signed tenancy agreement dated March 5, 2020. The monthly rent is \$1,202.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$500.00 was paid on December 1, 2015.

Both parties confirmed that on February 5, 2021, the landlord served the tenant with the 1 Month Notice dated February 5, 2021 in person. The 1 Month Notice sets out an effective end of tenancy date of March 7, 2021 and that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The details of cause state:

*Please see attached, titled "Details of the Events".*

[reproduced as written]

Both parties were advised that despite the 1 month notice showing an effective end of tenancy date of March 7, 2021, one months' notice is based upon a monthly notice not 30 days notice. As such, the landlord's notice is corrected to have an effective end of tenancy date of March 31, 2021.

The landlord confirmed that 7 reasons for cause were selected for ending the tenancy as per the 1 month notice dated February 5, 2021.

On the first reason for cause: the tenant has allowed an unreasonable number of occupants in the rental unit. The landlord has stated that the tenant is having her granddaughter occupy the rental unit with her for the last 2 years. The landlord claimed the tenant has 1 additional person living in the rental unit that has not been approved by the landlord.

The second reason for cause selected by the landlord is:

- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlord has claimed that the tenant has caused the neighboring tenants to be unreasonably disturbed due to receiving loud music noise complaints. The landlord claims that the tenant has parked a RV (recreational vehicle) in the driveway and has had parties causing loud noise which has resulted in multiple noise complaints.

The tenant disputes the landlord's claims but has confirmed that her girlfriend was visiting in her RV and that it was parked in the driveway for only 2 hours before leaving.

At the conclusion of the hearing the landlord referred to a submitted copy of an email dated March 29, 2021 which refers to a signed statement dated March 29, 2021 in

which the landlord's agent has referred to July 2-5, August 12-13 and September 4-6 in which the tenants caused extremely loud music that could be heard through the floor.

The third reason for cause selected by the landlord is:

- the tenant or person permitted on the property by the tenant has:
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The landlord claims that the tenants parked a recreational vehicle in the driveway which caused noxious fumes. The landlord stated that he has numerous complaints filed by other occupants and neighbors regarding the fumes. The landlord referred to signed letter dated March 16, 2021 which refers to propane fumes "wafting into the house causing me to close all the doors and windows despite doing this the smoke and fumes from the pit still made their way in." The letter also refers to the next day when the tenants tried to park the recreational vehicle in the driveway and left the vehicle running exhaust smoke making its way in through his residence.

The fourth and fifth reason for cause selected by the landlord is:

- the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord stated that the tenants have had numerous police attend the rental premises. During the hearing the landlord was informed that illegal activity was based upon a breach of a municipal, provincial or federal statute. The landlord stated that he considered the police attending the residence an illegal activity. The landlord was informed that police attendance at the rental property were not considered illegal activity and as such these portions of the landlord's claim were dismissed.

The sixth reason for cause selected by the landlord is:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord claims that the tenant has breached a material term of the tenancy by having a dog/pet in the rental property. The landlord referred to clause #22 of the signed tenancy agreement which states,

*22. 14B Paddon is a no pet residence.*

The landlord also referred to a submitted copy of an email dated January 13, 2021 in which the landlord's caretaker states in part,

*Yes, I can confirm that the granddaughter has been living there for quite a while (2 years sounds about right) and have heard the dog on multiple occasions now.*

The seventh reason for cause selected by the landlord is:

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

The landlord claims that the tenant has sublet/assigned the rental to their granddaughter who has been living there for approximately 2 years without any notice to the landlord. The landlord also refers to the submitted copy of an email dated January 13, 2021 from the landlord's caretaker (as noted above).

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Both parties confirmed the landlord served the tenants with the 1 month notice dated February 5, 2021 in person on February 5, 2021.

The tenant has allowed an unreasonable number of occupants in the unit is not an accurate description of his reason for cause. The landlord has provided direct testimony that the tenant's daughter (one person) has been occupying the rental unit for the last 2 years without the landlord's consent. The reason for cause selected by the landlord is "an unreasonable number of occupants in the rental unit". Having only 1 additional person occupying the rental unit does not constitute an unreasonable number. Furthermore the landlord has failed to provide any supporting evidence that having 1 additional person occupy the rental unit exceeds a reasonable number of occupants of the rental unit. For example the landlord has not provided any evidence that the rental unit is limited to only 1 person to occupy it as per an occupancy permit from the local municipality as per local bylaws. On this basis this first reason for cause was dismissed without leave to reapply.

The landlord has provided undisputed affirmed testimony that the tenants are in breach of a material term of the tenancy. The landlord stated that the tenants have a dog which is in contradiction of the no pet clause #22 as listed in the signed tenancy agreement.

The landlord provided a copy of the signed tenancy agreement listing the no pet clause and undisputed testimony that the tenants have dog. The landlord also provided a copy of an email from the landlord's agent which confirmed that the tenant has had dog in the rental premises for the last two years. On this basis, I accept the landlord's undisputed affirmed evidence and find on a balance of probabilities that the tenants have breached a material term of the tenancy by having a dog which is contrary to the signed tenancy agreement. On this basis, the tenant's application is dismissed without leave to reapply. The 1 month notice dated February 5, 2021 is upheld. The landlord is granted an order of possession pursuant to section 55 of the Act.

I also find on the remaining reasons for cause that the landlord has failed to provide sufficient evidence to satisfy me regarding reasons for cause #3 in that the tenant or a person permitted by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The landlord's reason in this case is in reference to a recreation vehicle that was parked in the driveway in July 2020. I find that the landlord's reason to be insufficient as the 1 month notice was not issued until February 5, 2021 regarding seriously jeopardizing the health or safety or lawful right of another occupant. On the landlord's final reason for cause of subletting/assigning the rental unit the landlord has referenced that the tenant's daughter was living in the rental unit for the last 2 years. The landlord referenced the email dated January 13, 2021 from his caretaker as confirmation. While the email does reference that the tenant has had "the granddaughter living there for quite a while (2 years sounds about right)", there is no evidence that the rental premises was assigned or sublet. Residential Tenancy Branch Policy Guideline #19, Assignment and Sublet defines an Assignment as the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant. Subletting is when the original tenant and landlord relationship remain in place and the new tenant enters into a sublease agreement with the original tenant. I find that there is insufficient evidence before me of either an assignment or a sublet. As such these portions of the landlord's reason for cause are dismissed.

### Conclusion

The landlord is granted an order of possession to be effective two days after it is served upon the tenants as the effective end of tenancy date has now passed.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: September 21, 2021

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Residential Tenancy Branch