



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPC FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") an Order of Possession for cause, pursuant to section 55; and authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

DM appeared for the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application for dispute resolution and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the landlord's application and evidence. DM testified that the landlord was emailed the tenants' evidence package on December 21, 2021. The landlord disputes receiving this email, but testified in the hearing that they had no issue with proceeding with the scheduled hearing, and the admittance of this evidence. Accordingly, the hearing proceeded as scheduled.

DM confirmed service of the landlord's 1 Month Notice to End Tenancy for Cause dated July 27, 2021, which was posted on the door on the same date. Accordingly, I find the tenant deemed served with the 1 Month Notice, pursuant to sections 88 and 90 of the *Act*, on July 30, 2021, three days after posting.

### **Issues**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me and my findings around it are set out below.

This tenancy originally began as a fixed term tenancy on July 1, 2020, and continued on a month-to-month basis after June 30, 2021. The monthly rent is set at \$1,450.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$725.00 and a pet damage deposit in the amount of \$725.00, which the landlord still holds. The tenant KL resides in the rental unit with her partner. DM is the tenant's mother, who does not reside there, but provides assistance to her daughter.

The landlord served the notice to end tenancy providing the following grounds:

1. The tenants have allowed an unreasonable number of occupants in a rental unit;
2. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. The tenants or a person permitted on the property by the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
4. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
5. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant; and
6. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord's agents testified that they had been attempting to work with the tenant for over a year to resolve issues with no success. The landlord testified that they have, and continue to, receive complaints about the tenant and tenant's guests, from other tenants

in the building, and that it is believed that the tenant and tenant's guests engage in illegal activity on the premises. Additionally, it is undisputed that the tenant has allowed an additional occupant to reside in the rental unit without approval from the landlord.

The landlord testified that this additional occupant and the tenant were engaged in threatening behaviour towards an employee of the landlord. The landlord testified that they have performed inspections of the rental unit, and discovered multiple sleeping bags on the floor, and evidence that the tenant smokes on the premises.

The landlord submitted copies of written warnings to the tenant, as well as written complaints from other tenants in the building.

DM testified that the tenant does not dispute one additional occupant, who is the tenant's partner who had moved in after the tenancy had started. The tenant disputes that any additional occupants reside there, and dispute that the number of occupants is unreasonable.

The tenant also disputes that they or their guest have participated in illegal activity, and testified that the police had attended on one occasion to deal with an endorsed warrant in relation to a driving offence.

The tenant testified that that they had a strained relationship with the landlord, and a dispute did occur after the landlord had removed the tenant's partner's belongings which included the ashes of the partner's father. DM testified that the tenant and partner were justifiably upset. The tenant testified that they had made requests for service from the landlord, which were not addressed such as obtaining mail box keys.

### **Analysis**

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

The landlord is seeking to end tenancy on the grounds that the tenant or their guests have engaged in illegal activity. Based on the evidence before me, I am not satisfied that the landlord has provided sufficient evidence of illegal activity.

Furthermore, the landlord is seeking to end the tenancy on the grounds that the tenant has allowed an unreasonable number of occupants in the rental unit. Although the tenant does not dispute that their partner does reside there, they dispute that there are

any additional occupants. In consideration of the evidence and testimony before me, I am not satisfied that the landlord had met the burden of proof to support that there is an unreasonable number of occupants in the rental unit. Although the tenant may have failed to follow the appropriate process for obtaining permission for the additional occupant, I find that landlord has failed to support how why the number of occupants in the rental unit, which is confirmed at two occupants, is considered unreasonable.

The landlord notes that the tenant has breached at least one material term of the tenancy agreement. A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

*To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In this case, I find that the tenancy agreement does clearly state that under “Additional Terms” that the Tenant shall be the only permanent occupant on the Premises” and that “Any individual intending to reside at the Premises for a period in excess of two(2) weeks must apply for tenancy to the landlord or Agent, and if approved, must sign a

Tenancy Agreement.” Although the landlord produced documentary evidence to support that the landlord had issued written warnings to the tenant, the evidence provided shows that the October 3, 2021, after the 1 Month Notice was served on July 27, 2021. The requirement of the 1 Month Notice is that the tenant must be provided with the opportunity to correct the material breach within a reasonable amount of time after written notice to do so before the 1 Month Notice is issued. In this case, I find that the landlord has provided insufficient evidence to demonstrate that this is the case. Although there was reference in the email dated May 27, 2021 from LB to DM that there is an unregistered occupant, the email does not warn the tenant that failure to address the matter would result in a possible end of the tenancy. Based on the testimony and evidence presented for this hearing, I am not satisfied that the tenant has breached a material term of the tenancy, and failed to correct the breach within a reasonable time after written notice to do so.

I have also considered the complaints submitted by other tenants, as well as the issues brought up in the landlord’s submissions. Based on the testimony and evidence before me, I find that that DM provided a reasonable explanation for the verbal threats received from the tenant and their partner. Although the choice of language and tone should be considered disturbing, I am not satisfied that this incident alone, especially in the context of the situation that day, justifies the ending of this tenancy.

I have also considered the tenants’ testimony that there is evidence of interpersonal disputes between the landlord and tenants. In this case, I find that the tenant does require assistance from her mother as the tenant is a person challenged with disabilities, and communication and interactions appear to be difficult. I do note the landlord’s patience in attempting to work with the tenant and tenant’s mother in dealing with the issues in this tenancy, and their obligation to address issues between the tenant and other parties. I have reviewed the letters received from other tenants, and I acknowledge the tenant’s concerns that these parties did not testify in the hearing to confirm the credibility of the statements made. Although I accept the landlord’s testimony that these statements were written by the tenants themselves, the tenant disputes the claims made by these parties. I find that more weight could be placed on the contents of these letters if the parties did appear and testify under oath during the hearing, and were available for cross examination. In this case, I find that the tenants had raised valid concerns about the ability to verify the validity of the statements made. In consideration of the evidence before me, I do not find that the evidence sufficiently supports that the tenant or tenant’s guests had engaged in the behaviour described.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. As per the section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice, and must move out.

In order for me to grant the landlord an Order of Possession as requested, I must still determine that the 1 Month Notice is valid and complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

In this case, I find that the landlord has failed to establish that the landlord has grounds to end the tenancy pursuant to section 47(1) of the *Act* for any of the reasons cited in the landlord's 1 Month Notice, and accordingly, I dismiss the landlord's application for an Order of Possession without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was unsuccessful with their application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

### **Conclusion**

The landlord's application is dismissed without leave to reapply. The 1 Month Notice dated July 27, 2021 is cancelled, and is of no force or legal effect. The tenancy is to continue 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: December 31, 2021