



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Handy Capable Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes    CNC

### Introduction

On October 13, 2021 the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking to cancel a One Month Notice to End Tenancy dated October 4, 2021 ("the One Month Notice").

The Tenant's Representative E.M. and the Landlord's Agent M.D. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following: the tenancy began on February 1, 2018. Currently, the Tenant is required to pay rent in the amount of \$220.00 to the

Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$250.00 and a pet damage deposit in the amount of \$50.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

At the start of the hearing, the parties agreed that the Tenant's Representative E.M. is the daughter of the Tenant. Furthermore, the parties acknowledged that E.M. currently resides with the Tenant along with her dog. The Landlord's Agent stated that the Tenant did not receive the Landlord's permission to allow additional occupants or pet, to reside with the Tenant in her one-bedroom rental unit. The Landlord's Agent referred to the tenancy agreement containing term 15 which states;

**15. Occupants and Invited Guests**

The landlord has selected the tenant on the basis of physical disabilities and the number of occupants among other criteria. The tenant agrees that only those persons listed as tenants and occupants, including those listed in the List of Additional tenants and Occupants, if any, are allowed to live in the residential premises during the term of this tenancy, unless the landlord otherwise consents in writing. Any change in the number of occupants is material and of great important to the landlord and entitles the landlord at its discretion to end this tenancy agreement. The tenant agrees to notify the landlord promptly of any change in the occupants. The landlord retains the right to evict an unqualified tenant. If the tenant is eligible for a rent subsidy, the tenant agrees that any person that resides with the tenant in excess of 14 days, whether or not consecutive, in any 12 month period, without the written consent of the landlord, will be considered an occupant and:

- a) that person's income must be declared to the landlord immediately;
- b) that person, if 19 years or older, must agree to be a tenant under this tenancy agreement by signing an addendum to this tenancy agreement; and failure to comply with these provisions entitles the landlord to end this tenancy agreement, and the following also apply:
- c) The landlord may not stop the tenant from having guests in the residential premises under reasonable circumstances. If the number of permanent occupants is unreasonable, the landlord may discuss this issue with the tenant and may serve a Notice to End a Residential Tenancy. Disputes regarding the notice may be resolved through arbitration under the RTA.
- d) In the event the handicapped tenant is no longer able to maintain an independent life style, or his/her condition has improved and no longer requires a wheel chair, the Landlord may end the tenancy.
- e) In the event the handicapped tenant dies, the other tenant will vacate or reapply for the premises having had a physical assessment done by a registered physio/occupational therapist for eligibility of tenancy.
- f) The landlord has the right to request, at his discretion, a re-evaluation of the tenant's physical disabilities by a registered physio/occupational therapist. The fee will be the responsibility of the tenant.
- g) The landlord retains the right to evict an unqualified tenant.
- h) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- i) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- j) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through arbitration under the RTA.

The Landlord provided a signed copy of the tenancy agreement in support. The agreement outlined that the Landlord has entered into an agreement with the BC Housing. Furthermore, the Landlord provided a "Tenancy Rules and Regulations Handbook" which is also signed by the Tenant. The document contains "Pet Ownership

Rules” which outlines that an Application must be made to the Landlord to register any pets in the rental unit for approval. The Landlord’s Agent stated that the Tenant is currently in breach of these conditions and have been provided with several written warnings issued by the Landlord to the Tenant indicating that these breaches are a material term of the tenancy and provided a reasonable deadline for the Tenant to come in compliance with the terms outlined above, or else the tenancy would end. The Landlord’s Agent stated that the Tenant has not yet taken any action to resolve the breaches.

For the above-mentioned reasons, The Landlord’s Agent stated that she served the Tenant with the One Month Notice on October 4, 2021 by posting it on the door of the dispute address. The Tenant confirmed having received the One Month Notice on the same day. The Landlord’s reasons for ending the tenancy on the One Month Notice are;

*“Tenant has allowed an unreasonable number of occupants in the unit”*

*“The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health and safety or lawful right 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.”*

In response, E.M. confirmed that she and her dog have occupied the rental unit with the Tenant since May 2021. E.M. confirmed that the Tenant has received the written warnings from the Landlord, however, has not taken action to correct the breaches as outlined by the Landlord. E.M. stated that she cannot afford to put her dog in a kennel. E.M. stated that the Tenant had a heart attack which has left her unable to live independently and requires E.M. to live with the Tenant as a caregiver. The Tenant provided a doctor’s note in support. As such, E.M. feels justified in occupying the rental unit for this purpose.

E.M. stated that the Landlord is bound by the BC Housing Resident Manager Guide which provides a clause allowing caregivers to occupy the rental unit. Furthermore, E.M. stated that the Landlord ought to accommodate their request for a larger rental unit. The Tenant provided a copy of the Guide in support. The relevant portion is outlined below:

Page 17: **5) Live-in Caregivers for Disabled Residents** If a disabled resident requires a full-time live-in or overnight caregiver, verification is required in writing from the Ministry of Health. When confirmation is received, place the resident in a unit with an additional bedroom for the caregiver

Page 21: **Resident Supports** From time to time, residents might need additional support to deal with health or other concerns for themselves or family members. Ensure you have a policy to address these types of situations; for example:

A resident who asks to have a sick relative or friend move in for a few months so the resident can care for them. In these situations, BC Housing will not subsidize an extra bedroom.

A resident who is admitted to hospital or other health facility (e.g. an addiction treatment centre), and wishes to hold onto their unit. In this situation, the housing provider must apply their policy, but if a resident needs to remain in care and can no longer live independently, the tenancy should be ended.

A resident who needs a live-in attendant for a brief period (e.g. following an operation or traumatic event) can keep their current unit. However, residents needing a permanent caregiver may qualify for an extra bedroom. See Live in Caregivers for Disabled Tenants for information.

E.M. stated that the Landlord is choosing not to accommodate their situation by allowing E.M. to reside with the Tenant as a caregiver. E.M. stated that they have also requested a larger unit should the Landlord have concerns regarding the number of occupants in the one bedroom, however, they have not yet been provided with other options.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on October 4, 2021. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, the Landlord is seeking to end the tenancy based on the fact that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

According to the 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.

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, 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, the Landlord provided evidence that additional occupants and pets must be approved of in writing by the Landlord, which the Landlord has indicated that the Tenant is in breach of, forming the basis of the One Month Notice. I accept that the Landlord has entered into an agreement with BC Housing. The Tenant has provided a BC Housing Resident Manager Guide which provides a clause which allows for caregivers to occupy the rental unit for disabled residents requiring care.

I find that this clause provides a notion that special consideration may be made to those Tenants who require additional care in form of a caretaker. During the hearing, E.M. stated that she is the Tenant's caretaker and provided a doctor's note to confirm. Given the BC Housing Resident Manager Guide allows for such considerations, I find that the Landlord has provided insufficient evidence to demonstrate that the additional occupant is a breach of a material term that is so important that the most trivial breach would give the Landlord the right to end the tenancy.

As for the dog in the rental unit, I find that the Pet Ownership Rules indicated that the Tenant must submit an application to the Landlord to have a pet registered. I find that the Tenant has provided insufficient evidence to demonstrate that they have submitted an application to the Landlord to gain approval for registration. I find that while the Tenant has breached the pet owner agreement, I find that the breach is not significant to the extent that the tenancy should end.

Nevertheless, the Tenant is now warned that they must comply with the regulations relating to pet application and registration. Furthermore, the Tenant is encouraged to discuss their situation with the Landlord and provide the Landlord with information relating to changes to the tenancy such as the Tenant's need for a caretaker prior to making changes without the Landlord's being made aware. Increased incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy.

I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has allowed an unreasonable number of occupants in the unit, or that the Tenant has seriously jeopardized the health and safety or lawful right of another occupant or the Landlord, or has breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In light of the above, I cancel the One Month Notice, dated October 4, 2021. I order the tenancy to continue until ended in accordance with the Act.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated October 4, 2021 is cancelled. The tenancy will 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: March 2, 2022

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Residential Tenancy Branch