



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, OLC, OT**

### Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord, SJ, and Legal Counsel, PO, and the Applicant, PL, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the One Month Notice on September 30, 2021 by placing the document in the Tenant's mailbox. The original Tenant subletted the rental unit to the Applicant, and the Tenant never provided a forwarding address for herself to the Landlord. The Landlord did a title search for the Tenant and found her property address, and served the One Month Notice by registered mail on October 13, 2021. PO referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the One

Month Notice was served on the Tenant on October 18, 2021 pursuant to Sections 88(c), 88(f) and 90(a) of the Act.

PL served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on October 15, 2021 (the “NoDRP package”). PL referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. PL served the evidence for this matter to the Landlord via Canada Post registered mail on January 28, 2022. PL referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package and the evidence five days after mailing them, on October 20, 2021 and February 2, 2022 respectively, in accordance with Sections 89(1)(c) and 90(a) of the Act.

#### Issues to be Decided

1. Is the Applicant entitled to cancellation of the Landlord’s One Month Notice?
2. If the Applicant is unsuccessful, is the Landlord entitled to an Order of Possession for the rental unit?
3. Is the Applicant entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?

#### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord asserts that the Applicant in this matter is not the Tenant. The parties agreed this periodic tenancy began on June 1, 2018. Monthly rent is \$1,100.00 payable on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$550.00 were collected at the start of the tenancy. During the sublet period, approximately the fall of 2020, the Tenant requested the return of the pet damage deposit. The Landlord returned the pet damage deposit to the Tenant. The Landlord still holds the security deposit in trust for the Tenant.

The Landlord's reasons for the One Month Notice to end tenancy are 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, and the Tenant has assigned or sublet the rental unit without the Landlord's written consent. Additional details set out on the One Month Notice are:

*[Landlord] and [Tenant] entered into a month to month agreement starting June 01, 2018, and that tenancy has not been ended by either party with a Notice to End Tenancy. The landlord [name] permitted [Tenant] a fixed term sublease to [Applicant's name] for a period of one year, ending September 30, 2021. This was in writing and included a vacate clause with the fixed term end date. The landlord's permission to sublet has not been amended, extended or renewed. The landlord still has a valid tenancy agreement with [Tenant ] as it has not been ended by a Notice to End Tenancy, and the tenant [name] has also not requested nor received the security deposit associated with the tenancy.*

The effective date of the One Month Notice was October 31, 2021.

The Landlord uploaded a Request to Sublet Premises as part of their evidentiary documents. On September 11, 2020, the Tenant made the request to sublet the rental unit to Landlord, and the Landlord agreed on September 12, 2020. This document states, "*Your request to sublet the above rental unit to [the Applicant] is approved until September 30, 2021.*"

In the Landlord's documentary evidence, the Tenant informed the Landlord that she was not returning to the city where the rental unit is situated. The Landlord engaged in a conversation with the Applicant about entering a tenancy agreement, but both of those parties did not reach an agreement. The Landlord accepted rent for October 2021 from the Applicant, but noted that it was for use and occupancy only. The Landlord submits since October 1, 2021, the Tenant has sublet the rental unit without the Landlord's written consent.

The Applicant submits that she has standing in this matter as a Tenant. She testified that it was her understanding that once the Landlord received information from the Tenant that she was not returning, the Applicant agreed she would continue renting.

In further conversations, the Applicant submits that the Landlord wanted to increase her rent to \$1,200.00 per month, but the Applicant said we are in a rent freeze and this was not permissible. The Applicant's position is that she had entered into an oral tenancy after the Landlord was informed that the Tenant was not returning and by way of the Landlord accepting rent from her, this affirmed her tenancy.

The original Tenant did not attend this hearing to provide evidence in this matter.

The Landlord submits that the Tenant has not formally ended her tenancy, and she still holds the Tenant's security deposit in trust for her.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant section for this matter, it states:

#### ***Landlord's notice: cause***

- 47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

*(h) the tenant*

- (i) has failed to comply with a material term, and*
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];*

...

- (2) A notice under this section must end the tenancy effective on a date that is*

- (a) *not earlier than one month after the date the notice is received, and*
  - (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
- (5) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
  - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
  - (b) *must vacate the rental unit by that date.*

The Landlord served the One Month Notice on the Tenant on September 30, 2021 by placing the notice in the Tenant's mailbox, and by registered mail on October 18, 2021. I find the One Month Notice complies to the form and content requirements of Section 52 of the Act. The Applicant, not the Tenant, applied for dispute resolution of the One Month Notice on October 7, 2021.

Residential Tenancy Policy Guideline #19 – Assignment and Sublet helps parties in understanding issues that are likely to be relevant in a sublet situation. I copy Section C on subletting below:

*When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord,*

*and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.*

On September 12, 2020, the original Tenant agreed to the terms stated in the Request to Sublet Premises, including an end date for the sublease which was documented as September 30, 2021. Policy Guideline #19 states there is no contractual relationship between the original Landlord and the Applicant. The Tenant in this matter has not formally ended her tenancy with the Landlord pursuant to the relevant sections of Section 44 of the Act. When the Landlord was notified that the Tenant was not planning on returning to the rental unit, the Landlord attempted tenancy negotiations with the Applicant, but these parties did not reach an agreement. When the Applicant paid rent for October 2021, the Landlord accepted the payment for ‘use and occupancy only’, and wrote the Tenant that if the Tenant paid October’s rent, she would return the Applicant’s rental payment.

The Applicant stated by the Landlord accepting rental payments from her, the Landlord and the Applicant had entered into an oral tenancy agreement. I do not agree with this finding, as the tenancy between the Landlord and the Tenant had not ended. The Landlord knew she was in a sublease period, and at the end of the sublease, she sought possession of her rental property. I find that the Landlord and the Applicant in this matter do not have an oral or otherwise contractual tenancy agreement. Pursuant to Section 47(5)(a) of the Act, I find that the Tenant has conclusively presumed that the tenancy has ended, and must vacate the rental unit pursuant to Section 47(5)(b) of the Act. I find that the Landlord has proven on a balance of probabilities that this tenancy must end due to the Tenant subletting the rental unit without the Landlord’s written consent. I uphold the Landlord’s One Month Notice and dismiss the Applicant’s application in its entirety without leave to re-apply.

As the Applicant failed in her application, I must consider if the Landlord is entitled to an Order of Possession. 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 an order of*

*possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (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.*

The One Month Notice complies with Section 52 of the Act. Based on the testimony of the parties and my reasons above, I find that the original Tenant retained an interest in the tenancy, and the Landlord has proven cause to end the tenancy based on a sublet situation which did not have the Landlord's consent to continue. I uphold the Landlord's notice and I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

### Conclusion

The Applicant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: March 01, 2022

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Residential Tenancy Branch