



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Columbia Property Management and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNC, LRE, FFT

### **Introduction**

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On January 26, 2022, the Applicants filed for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated January 24, 2022 (the One Month Notice);
- an order to suspend or set conditions on the landlord's right to enter the rental unit; and
- the filing fee.

The hearing teleconference was attended by the landlord's agent (KM/the Respondent), the caretaker, the tenant (TC), and the occupant (JD). (I will refer to the tenant and occupant JD collectively as the Applicants.) The caretaker was present as an observer, so was not affirmed and did not provide testimony. The remaining attendees were affirmed. All present were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The occupant testified that the Notice of Dispute Resolution Proceeding and some of their evidence was served on the landlord by registered mail on February 11, 2022, and that a second evidence package was also served by registered mail on April 14, 2022. KM testified that both packages were received by the landlord. I find the Applicants served the landlord in accordance with section 89 of the Act.

KM testified that the landlord's responsive evidence was served on the Applicants by registered mail on April 11, 2022, and the Applicants confirmed they received it. I find the landlord served the Applicants in accordance with section 88 of the Act.

### **Preliminary Matters**

The Residential Tenancy Branch Rule of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the Applicants' claim for an order to suspend or set conditions on the landlord's right to enter the rental unit.

During the hearing, KM and occupant JD referenced prior Residential Tenancy Branch decisions, as noted on the cover page of this decision.

#### Issues to be Decided

- 1) Are the Applicants entitled to an order cancelling the One Month Notice?
- 2) If not, is the Respondent entitled to an order of possession?
- 3) Are the Applicants entitled to the filing fee?

#### Background and Evidence

Those present agreed on the following particulars regarding the tenancy. It began on May 1, 2021; rent is \$3,400.00, due on the first of the month; and the tenant paid a security deposit of \$1,700.00, which the landlord still holds.

A copy of the tenancy agreement is submitted as evidence. It lists a single tenant: TC.

KM testified the One Month Notice was served on the tenant by posting it to the door on January 24, 2022. The Applicants confirmed they received the Notice the same day.

A copy of the One Month Notice is submitted as evidence. It is signed and dated by the Landlord's agent, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The One Month Notice indicates the tenancy is ending because 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.

The Details of Causes section of the Notice refers to: the landlord requesting an email address, so as to send the occupant a tenancy application; a letter for an unauthorized occupant being delivered to the tenant, requesting the occupant complete the application in order to possibly continue residing in the unit; and the Notice alleges that there is a second unauthorized applicant in the rental unit, the tenant's spouse.

When I asked KM what material term of the tenancy agreement the tenant had allegedly breached, she indicated section 9 of the tenancy agreement, Assign or Sublet, which reads as follows:

**9. ASSIGN OR SUBLET**

- 1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length and has 6 months or more remaining in the term, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.
- 2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the *Residential Tenancy Act*.

KM testified that the tenant was provided a written notice, and submitted as evidence a letter to the tenant, dated November 25, 2021. The letter is regarding "unauthorized occupants," and includes the following:

It has come to our attention that you have an unauthorized occupant living in your suite. Individuals occupying the suite, other than yourself, that are not listed on the tenancy agreement, is considered a **material breach** of your contract with us.

Section FF, of your tenancy, additional occupants, clearly states; **No person, other than those listed in paragraph 1 of this Agreement, may occupy the rental unit. A person who resides in the rental unit for a period in excess of 14 cumulative days in any calendar year will be considered to be occupying the rental unit contrary to this Agreement and without right or permission of the landlord.**

All Occupants living in the unit must apply and be approved and added to the lease or must move out of the unit as they are not authorized occupants. If these terms are not followed, we may issue you a one month notice to end tenancy.

You have been previously informed that an application can be made available upon request. I have included one with this letter for your use if you would like to have us consider adding your unauthorized occupant to your lease. Once filled out, it can be

As I had not found it in the submitted tenancy agreement, I asked KM about the reference to "Section FF, of your tenancy," and the quoted language; she indicated that Section FF was from the tenancy agreement the property management company uses, and acknowledged that the tenant and the previous owner signed a different tenancy agreement which does not include the section or language referred to in the letter.

KM provided additional testimony describing the landlord's efforts to have occupant JD fill out a tenancy application, JD's alleged behavioural problems when interacting with staff of the property management company, and referred to a second unauthorized occupant.

KM testified that the property owner has received threats from JD, so does not want to approve a rental application from him.

Occupant JD testified he was to have been listed as a tenant, but that at the last minute, the landlord's representative indicated he wanted only tenant TC listed on the tenancy agreement, and that it "was no issue" for JD to live there. JD's testimony was confirmed by TC.

JD testified he had not threatened the owner, but stated in a voicemail that he would take the owner to court if JD became ill due to outstanding repairs in the unit. JD testified that the landlord was attempting to "misrepresent" him, referring to the voicemail and other communication between the parties.

JD testified that the property management company was hired a few months after he and tenant TC began renting the property, and that there was no issue raised about JD living in the unit until JD asked for repairs to be done.

JD testified he refused to complete the rental application because he should not have to complete one, and the landlord could deny his application.

### Analysis

Section 47 of the Act permits a landlord to give a notice to end a tenancy for cause.

Based on the parties' testimony, I find the landlord served the tenant the One Month Notice on January 24, 2022, in accordance with section 88 of the Act, and that the tenant received it the same day.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the tenant received the Notice on January 24, 2022 and applied to dispute it on January 26, 2022, I find he met the 10-day deadline.

I find the One Month Notice meets the form and content requirements of section 52 of the Act because it is signed and dated by the Landlord's agent, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form,

The reason for the Notice is 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.

KM has testified that the material term breached is section 9, entitled "Assign or Sublet." This section of the tenancy agreement states that the tenant may assign or sublet the unit with the landlord's permission, and explains that "Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent."

[Policy Guideline 19. Assignment and Sublet](#) provides further clarification on assigning and subletting. It states: "Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord," and "the use of the word 'sublet' can cause confusion because under

the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet."

In both assigning and subletting, the original tenant moves out of the rental unit. In this dispute both the tenant and occupant JD reside in the rental unit.

The landlord did not provide evidence the tenant entered into a tenancy agreement that requires every occupant of the rental unit to enter into a tenancy agreement with the landlord.

I find the landlord has failed to prove the grounds for the One Month Notice because they have not demonstrated that the tenant has breached a material term of the tenancy agreement.

Therefore, I cancel the One Month Notice. The tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Applicants are successful in their application, I order the landlord to pay the \$100.00 filing fee the Applicants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

### Conclusion

The One Month Notice is cancelled, and the tenancy will continue until it is 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: May 05, 2022

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Residential Tenancy Branch