



# 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 an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on January 25, 2022, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

This matter commenced on May 5, 2022, and was adjourned to this day, June 10, 2022, solely to hear final submissions from the landlord and tenant. The landlord’s agent attended with an additional witness that was not present on May 5, 2022. Counsel for the tenant objected to any further evidence to being submitted as that was an order I made in my interim decision.

I find it appropriate to not allow the landlord’s witness to provide any testimony as the parties had closed their case and the only thing left for me to hear was their final submission.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on February 1, 2020. Rent for the subsidized unit is the amount of \$1,327.00 payable on the first of each month. A security deposit of \$280.00 was paid by the tenant. The tenant’s rent based on income and is reviewable each year.

The parties agreed the tenant was served with the Notice, with an effective vacancy date of February 28, 2022.

The reasons for ending the tenancy within the Notice are as follows:

Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)	
<input checked="" type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
<input type="checkbox"/>	Tenant is repeatedly late paying rent
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/>	put the landlord's property at significant risk

The details within the Notice are as follows:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): Tenant has had his brother living with him in violation of tenant's Tenancy Agreement. Tenant has also disturbed the quiet use and enjoyment of his neighbours

The landlord's agent testified that the tenant has been allowing their brother to live in the rental unit, which is a breach of the tenancy agreement and the rent subsidy program. As this would be two adult and two children living in the rental unit and is considered an unreasonable amount of occupants based on the CRHC policies.

The landlord's agent testified that the tenant's brother was discovered living in the rental unit in April 2020. The agent stated that the tenant met with staff on June 25, 2020, and the tenant stated that their brother had been staying there since November 2019. The agent stated that the tenant was sent a breach letter indicating that their brother would have to vacate the premise by July 20, 2020.

The landlord's agent testified that on January 6, 2022, they sent the tenant a final breach letter, as they had received complaints that the tenant's brother was still living in the rental unit and the tenant had breached a no contact order that they had placed on the tenant. The agent stated that in the breach letter the tenant was required provided acceptable proof of residency for the tenant's brother.

The landlord's agent testified that on January 17, 2022, there was telephone conversation with the tenant, a person assisting the tenant and the tenant's brother. During this conversation it was established that the tenant's brother did not have an actual residence and was living between two residences, which one was the tenants,

and the other was the person assisting the tenant. Filed in evidence is a copy of the SAP notes – January 17, 2022.

Counsel submits for the tenant that the landlord has not established any breach that has occurred after the January 24, 2022, date, which is noted in the breach letter and the Notice was issued on January 25, 2022. Counsel submits the landlord has not indicated in the Notice that they are ending the tenancy on a breach of a material term of the tenancy agreement.

Counsel submits for the tenant that the tenant could not have breached the tenancy agreement by having someone reside in excess of three weeks in a calendar year as the breach letter was given as the 6th days in the calendar year.

Counsel submits that the landlord's breach letter of January 6, 2022, regarding the tenant's brother residence would only accept specify documents relating to the tenant's brother residency which the letter reads in part:

Anyone residing in your suite in excess of 3 weeks in a calendar year constitutes a breach of your Tenancy Agreement and must be rectified immediately.

If your additional occupant is maintaining a residence elsewhere, we require proof of that residency by submission **THREE** of the following listed documentation:

1. a valid driver's license,
2. a Tenancy Agreement (in the prescribed format in accordance with the Residential Tenancy Act) if the person rents,
3. a Property Tax Notice if the person owns property,
4. a current B.C. Hydro bill,
5. a current cable television bill.

These documents are the only acceptable proof of residency. Please submit this documentation no later than January 24, 2022.

Counsel submits that the tenant's brother did not have any of these documents that were only acceptable by the landlord because the tenant's brother was a refugee and their application had not been approved at the time. Counsel submits that the tenant's brother did not have a valid driver's license and was in living in a shared

accommodation that was not under the Residential Tenancy Act; nor did he own property or have any utilities that were in their name.

Counsel for the tenant submits that the signed letter of WM, submitted into evidence shows that the tenant's brother has been living with WM since July 2020.

The tenant testified that their brother is not living in the rental unit. The tenant stated that they are a fulltime health care worker and would have their brother stay at the rental unit to provide care for their two young children when working. The tenant stated that they would do both day and night shift. However, they have recently changed their shift.

The witness WM provided affirmed testimony. The witness WM for the tenant testified that they do not remember the specific date that the tenant's brother moved in with them to provide care for them; however, the tenant's brother has been living with them for a long period of time, at least over a year.

The landlord's agent questioned WM and asked the witness that it sounds like you are not clear on the date the tenant's brother moved in, although you gave a specific date in your letter. WM stated that they are in their 80's and I do not remember things quickly.

The landlord's agent questioned WM and asked the witness how much rent the tenant's brother pays. WM stated about \$50.00 per month because he is providing care for him. WM stated that there is no relationship between the tenant's brother and himself as the tenant's brother was referred to him by a person they had done business with.

The witness AA provided affirmed testimony. The witness AA, the brother of the tenant, testified that they have been living with WM for two years and helping his brother at the

same time with childcare as he is a health care worker. AA stated that the since their brother received the Notice that having stopped babysitting the children for him.

Counsel for the tenant submits that the Notice should be cancelled as it does not provide sufficient details, such as dates/times, names or any details of how the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's agent argued if the tenant's brother was providing childcare the tenant could have given them a copy of their work schedule. The agent stated also if the tenant was able to change their shift at work, they could have done this sooner.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing; I find that the landlord has not provided sufficient evidence to show the reasons stated in the Notice for the following reasons.

In this case, the tenant's brother had lived with the tenant in 2020, and the tenant was given a warning that their brother was not allowed to live in the rental unit. By the evidence presented the tenant's brother had vacated as there were no further issues for an extended period of time. I find if the tenant's brother had continued to live in the rental unit continuously for this long duration it would have been reasonable to discover before January 2022, such as receiving ongoing complaints, which were then verified by the landlord to be true.

The Notice does not list the reason for ending the tenancy was due to a breach a material term of the tenancy agreement.

While I accept the landlord received a complaint in January 2022, about the tenant's brother being at the rental unit and alleged the tenant's brother is living there; however, I am not satisfied that the landlord has proven this to be true.

The SAP notes – January 17, 2022, shows the tenant brother was residing between 2 residents. The notes also states the following:

“after a great deal of discussion, we established that the tenant's brother does not have an actual address. He stays with another person for some of the time and **with the tenant, some of that, providing childcare to the children**”.

The tenant is a health care worker, who at the time does shift work. I find it is reasonable that the tenant's brother or any other person, would sleep at the rental unit to provide childcare to the tenant's two young children while the tenant was working nightshift or be at the rental unit during the day providing that service. This cannot be found that the tenant has allowed an unreasonable amount of occupants in the rental unit.

I find the tenant has the same rights to access childcare services regardless of the hours they work, and this service would not constitute an unreasonable amount of occupants. This is one person providing childcare services. Nor could this be deemed someone residing in the rental unit contrary to the tenancy agreement or be applied towards the 3 weeks to which the tenant is allowed to have guest stay.

Further, the landlord knew that the tenant's brother was providing childcare on January 17, 2022, as this is written in the SAP notes, I find the landlord could have and should have reasonable consider the validity of this, by requesting from the tenant a copy of their work scheduled so they clearly determine if the tenant truly was accessing childcare services. This was not done and appears to simply have been ignored or not considered a valid reason for having someone stay in the rental unit. The tenant was a fulltime worker and their work shift varied, which is common knowledge for health care workers. I find it would be reasonable to conclude that the tenant must have had to have childcare for their children during this time.

Further, the SAP notes show the tenant brother was staying elsewhere, although it may have not been permanent or even a stable residency at that time as the tenant's brother was waiting for their refugee application to be process; however, the landlord only wanted proof that the tenant's brother had permanent housing by providing specific documents which were unobtainable at the time.

While I question whether or not the tenant's brother was residing with the witness WM from July 2020, as it was unclear if WM truly knew the exact date. However, that is not the issue I must decide. The issue is whether the tenant had an unreasonable amount

of occupants in the rental unit. I am not satisfied that the landlord has met the burden of proof.

I have not considered any submissions given on the second ground in the Notice. I accept the tenant's legal counsel's submission that the details written in the Notice are insufficient as they do not provide any dates, times, names or even the allegation on how the tenant significantly interfered or unreasonable disturbed the quiet use of enjoyment of the neighbour. I also questioned if the landlord has a right to place a no contact order against the tenant as this may be overstepping their authority as a landlord. The landlord must prove a significant interference or unreasonable disturbance and must provide the details in the Notice, which was not done.

In light of the above, I grant the tenant's application and cancel the Notice. The tenancy will continue until legally ended. As the tenant was successful with their application, I authorize the tenant a one-time rent reduction in the amount of \$100.00 from a future rent payable to the landlord.

### Conclusion

The tenant's application is granted. The Notice is cancelled and has no force or effect. The tenant is granted a one-time rent reduction in the above amount to recover the cost of the filing fee from the landlord.

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: June 17, 2022

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Residential Tenancy Branch